

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1296-97

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

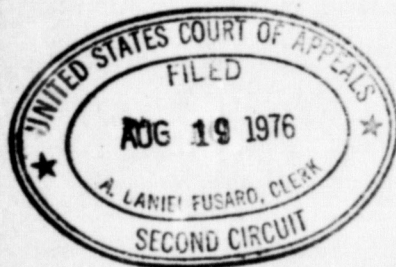
HAROLD ROSENBERG,

Appellant.

B
P/S

On Appeal from the United States District
Court for the Southern District of New York

APPENDIX TO BRIEF ON BEHALF OF
APPELLANT



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PAGINATION AS IN ORIGINAL COPY

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ards

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F R A N C I S M C D O N E L L, called as a witness

in behalf of the government, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Mr. Witness, by whom are you employed?

A The United States Secret Service, Treasury
Department.

Q In what capacity are you so employed?

A Assigned as a special agent in charge of the
New York office.

Q I direct your attention to January 28, 1976.

Were you so employed by the Secret Service?

A Yes, I was.

Q Were you on duty on that date?

A On January 28, 1976 I was assigned to proceed
in an undercover capacity to Joyce's Pub located at 50th
Street and Second Avenue in New York City, to meet with the
defendant, Mr. Heimerle.

Q When you got to Joyce's Pub were you carrying
anything with you?

A Yes, I was.

Q What, if anything, were you carrying?

A I was carrying \$600, \$6 or \$700 in official

A-2

1 ards McDonnell - direct 10
2 prerecorded funds.

3 Q Mr. McDonnell, I show you Government Exhibit
4 No.2. I ask you to examine it and ask you if you can
5 identify it for the Court and jury?

6 A This is a photostatic copy of the official
7 government funds that I had in my possession that day.

8 MR. NAFTALIS: Do you wish to see this? I
9 offer it.

10 MR. LOPEZ: Objection, not binding on defendant
11 Rosenberg.

12 MR. POLLACK: Objection as to relevance at this
13 time.

14 THE COURT: Let me see them.

15 (Handed to Court.)

16 THE COURT: I will take them subject to connec-
17 tion.

xx 18 (Government Exhibit 2 for Identification re-
19 ceived in Evidence.)

20 Q Mr. McDonnell, after you arrived at Joyce's
21 Pub who, if anyone, did you see there?

22 A I met with someone named Julian Mitchell who
23 was acting in the capacity of an informant for the United
24 States Secret Service.

25 Q What, if anything, did you do with Mr. Mitchell

1 ards McDonell - direct 11

2 at that time?

3 A I gave Mr. Mitchell \$300 in the prerecorded
4 funds.

5 Q That is \$300 out of those funds shown in Govern-
6 ment's Exhibit 2 in Evidence?

7 A Yes.

8 Q What, if anything, did you do after you gave
9 him the \$300 in prerecorded funds?

10 A A short time later I observed the defendant,
11 Mr. Heimerle, come to the door of the bar and motion to
12 Julian Mitchell to come outside.

13 Q What, if anything, happened after that?

14 A A few minutes later Mr. Mitchell came in, spoke
15 with me, and both of us went outside and entered a 1970
16 goldish-brown Pontiac.

17 Q Was there anyone else in the Pontiac?

18 A Mr. Heimerle was in the car.

19 Q Mr. McDonell, you refer to Mr. Heimerle. Do
20 you see him present in the courtroom?

21 A Yes, seated there at the table in the brown
22 sports jacket second to the right of the defense table.

23 THE COURT: Identification conceded?

24 MR. POLLACK: Yes, your Honor.

25 Q What, if anything, did you do when you entered

1 ards McDonell - direct 12
2 the car?

3 A I was introduced to Mr. Heimerle as a stock and
4 bond guy from Philadelphia.

5 Mr. Heimerle then pulled the automobile out in traffic
6 and we circled the block, circled the block 50th to 51st,
7 Second to First Avenue.

8 On the way around the block, Mr. Heimerle produced
9 from the seat from his jacket a small package and handed it
10 to Mr. Mitchell.

11 MR. LOPEZ: Objection and I would like a limiting
12 instruction as to Rosenberg at this time.

13 THE COURT: All this evidence coming in at this
14 time is admitted solely as to the defendant Heimerle, not
15 the defendant Rosenberg.

16 The jury will keep that in mind until I further
17 instruct you on it.

18 Q Continue, Mr. McDonell..

19 A Mr. Heimerle took the package or produced the
20 small package and handed it to Mr. Mitchell and Mr. Mitchell
21 looked at it for a moment and handed it over the back seat
22 to me.

23 I looked in the package and observed that it contained
24 counterfeit \$100 Federal Reserve Notes. I later determined,
25 after examining the package more closely, that it contained

A-5

1 ards McDonell - direct 13

2 50 \$100 counterfeit Federal Reserve Notes.

3 Q Mr. McDonell, I show you Government Exhibit
4 No.4 for Identification. I ask you to examine it and identi-
5 fy it if you can.

6 A This is the package that I received from
7 Mr. Mitchell later on that same date. It bears my initials
8 and the date 1/28/76.

9 THE COURT: Is that the package that Heimerle
10 had in the car?

11 THE WITNESS: Yes, your Honor, given to me but
12 I returned it back to Mr. Mitchell.

13 THE COURT: Yes, then what happened to it?

14 THE WITNESS: Mr. Mitchell kept it until we got
15 out of the car that day. Then he gave it back to me.

16 Q What, if anything, did Mr. Heimerle say to you
17 as you rode around in the car?

18 A I looked at the bills in the package and I told
19 him that they were of good quality but the price was a little
20 high.

21 I told Mr. Heimerle that I was a stock and bond guy
22 from Philadelphia and that I didn't care too much for money,
23 I was more interested in Treasury Bills.

24 Mr. Heimerle asked me if I knew an individual by
25 the name of Willie Benjamin from Philadelphia and I said I

ards

McDonnell - direct

14

did, that he was a stock and bond dealer, came from the northeaster section of the city.

I told Mr. Heimerle I was interested in Treasury Bills and stocks and bonds and he asked me specifically if I was interested in Treasury Bills. I said I was and he says I have some but they are counterfeit.

I said that was all right but I had to take a look at them. I wanted to see a sample piece, to examine it, before we put a deal together that day for some future occasion.

Mr. Heimerle asked me again if I could use some of the money and I told him that I would take the \$5000 package and see if I could move it down in Philadelphia.

We then returned to the area in front of Joyce's Pub where arrangements were made for Mr. Heimerle to get me the \$5000 package and a counterfeit Treasury Bill and that we will meet on a later date and arrangements for that would be made through this individual, Mitchell, for the meeting.

B3 I then exited the car with Mr. Mitchell and we went into Joyce's Pub where I took possession of that package from Mr. Mitchell.

Q This would be the money you just examined and identified as Government Exhibit 4?

A Yes. I took possession of that immediately after

A-7

1 ards McDonell - direct 16

2 received in Evidence.)

3 Q Mr. McDonell, did there come a time when you
4 met with Mr. Heimerle again?

5 A Yes. I met with Mr. Heimerle again on February
6 2nd, 1976.

7 Q Could you indicate the circumstances surrounding
8 that meeting?

9 A On that date, about 1:30 p.m., I met with
10 Mr. Heimerle at Joyce's Pub and we went outside and got into
11 the same car, the 1970 goldish-brown Pontiac and we again
12 circled the block, 50th to 51st, Second to First Avenue,
13 at which time Mr. Heimerle produced from his jacket a small
14 package and handed it to me.

15 I found this package to contain 50 counterfeit \$100
16 Federal Reserve Notes.

17 I paid Mr. Heimerle \$600 in prerecorded funds for this
18 package.

19 During the circling of the block, Heimerle told me
20 that he was unable to get the Treasury Bill but that he would
21 get it shortly and there was no problem, on our next meeting
22 he would have it for me.

23 I told Mr. Heimerle that I had been to Philadelphia
24 with the sample counterfeit note and had arranged the sale
25 of these notes and Heimerle asked me how much I wanted, a

1 ards McDonnell - direct 17
2 million?

3 I said, no, that I didn't want to deal that big, I
4 only wanted \$125 thousand in notes.

5 After I paid Heimerle and we circled the block, we
6 stopped in front of Joyce's Pub again, at which time I
7 told him that I again would contact him through Mr. Mitchell
8 and that I wanted the \$125 thousand package and if I could
9 have the Treasury Bill to take a look at it.

10 The \$125 thousand package of notes wasn't for me, it
11 was for somebody else in Philadelphia.

12 I told him that the price that I was paying for these
13 bills was 12 percent or \$12 on \$100 and it was too high.
14 I wanted a price reduction for the larger package down to
15 10 points.

16 Mr. Heimerle told me that he didn't know whether he
17 could do this but he would try. He would see what he could
18 do. After giving him the money and this conversation I
19 departed the car, went to Joyce's Pub and Heimerle left the
20 area.

21 Q Special Agent McDonnell, I show you Government
22 Exhibit 5 for Identification. I ask you if you can identify
23 it, please?

24 A This is the photostat of the prerecorded funds
25 on February 2, 1976.

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ards McDonnell - direct

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A Yes, I did.

Q What date was that?

A I met with Mr. Heimerle on the 5th of February.

Q Do you recall what time of day it was?

A It was about 1:30. It was supposed to be a 1:00 o'clock meeting I believe but he was about a half-hour late that day.

Q Where did this meeting take place?

A Again it took place at Joyce's Pub up at 50th Street and Second Avenue.

Q Who, if anyone, accompanied you to that meeting?

A Special Agent Jane Bisacquino accompanied me in an undercover capacity as my girlfriend, Janie.

Q Did there come a time Mr. Heimerle appeared?

A Yes, he did. He came into the bar about 1:30 and he met with Special Agent Bisacquino and myself and I introduced him to Agent Bisacquino. I introduced Special Agent Bisacquino as Janie, my girlfriend, to him. We were there a few minutes and then he asked me to come outside to his car.

Q Did you accompany him to the car?

A Yes, I followed him outside.

Q Did Special Agent Bisacquino accompany you?

A No. He told me to tell her to wait there and

1 ards McDonnell - direct 22

2 Heimerle and I went out to the 1970 gold Pontiac sedan.

3 Q What, if anything, happened when you got to the
4 car?

5 A We got in the car and again we circled the
6 block as we had previously done, 50th to 51st, Second to
7 First Avenue.

8 Heimerle told me that he was having some difficulty
9 getting ahold of the Treasury Bill and that he wanted to
10 conclude this counterfeit deal before he went on.

11 He asked me what I wanted and I told him I wanted
12 \$125 thousand package that I previously told him about and
13 that on the following day, meaning the 6th, I was going
14 back to Philadelphia and wanted to bring the package with
15 me to Philadelphia because I had to give it to somebody.

16 I told Heimerle that I wanted to try and get it today.
17 He told me that he was having some difficulty and had to
18 reach out to his people but he couldn't do this until after
19 dinner, that it had to be done somewhere around 7:00 o'clock
20 at night; that he would have to talk to somebody and get
21 ahold of it and then it could be done.

22 He told me to forget about the Treasury Bill for now,
23 just do this counterfeit deal.

24 He told me that -- or gave me two phone numbers to
25 contact him at and told me they were coin boxes and that I

A-11

1 ards McDonell - direct 23
2 should call him later that evening at these coin boxes at
3 midnight, exactly midnight to call him at either one of
4 these two phones, that he would be there but to call at
5 12:00 o'clock or shortly thereafter, not to be late because
6 he wouldn't wait there.
7 He told me that he would probably have the package
8 and we could do the deal that night.
9 He stopped on 51st Street, I believe it was 51st
10 Street, he stopped and looked in his rear view mirror a
11 number of times prior to returning to in front of Joyce's
12 Pub.
13 We returned to in front of Joyce's Pub and agreed to
14 meet him or call him exactly 12:00 that night. I then
15 departed the automobile, returned to the restaurant and
16 met with Special Agent Bisacquino and returned to the office.
17 Q Special Agent McDonell, I direct your attention
18 to the evening of February 5, 1976. What, if anything,
19 did you do the evening of February 5, 1976?
20 A On February 5, 1976 at around 12:00 o'clock I
21 called Heimerle.
22 Q Twelve midnight?
23 A Twelve midnight it was.
24 Q Between February 5 and 6?
25 A Yes. The call probably would have went into

A-12

ards

McDonnell - direct

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just about midnight that I called him and went into the morning of the 6th, a.m. of the 6th.

I called Heimerle on the phone and he answered the phone, said it was Jimmy. I asked him how he was doing. He said that he was having some difficulty coming up with the \$125 thousand package.

I told him that I was going to go back to Philadelphia and I would get in touch with him and then he told me he could have a portion of the package, about \$35 thousand worth of the package and asked me if I wanted to take that back with me and not go back to Philadelphia empty-handed.

I agreed to this and he told me to meet him at the Brasserie Restaurant, 51st Street between Lexington and Park Avenue.

At this time in the office Special Agent Bisacchino was there and he alluded to the fact that I didn't know where the restaurant was and I asked Bisacchino where it was.

I then agreed to meet Mr. Heimerle at the restaurant and then we had a short exchange of comments concerning what time we would meet. I remember it specifically because there was a snowstorm that night and it had taken me a long time to drive into my office that night from home.

And Heimerle told me he was quite a distance away

1 ards McDonell - direct 25

2 from this restaurant, it would take him at least a couple
3 of hours to pick it up and get there, to the restaurant.

4 I told Heimerle not to leave me at the restaurant,
5 I was going to be there and wait for him and if he got
6 jammed up and couldn't make it through the snow, give me a
7 call and page me or something and not to leave me there be-
8 cause I was going to wait until he showed up. He agreed
9 to do that. We terminated the call.

10 Q You indicated that when Mr. Heimerle told you
11 to meet at the Brasserie Restaurant you indicated you
12 didn't know where it was, it wasn't familiar to yo .

13 What reason, if any, did you indicate to him --

14 MR. POLLACK: Objection.

15 THE COURT: Sustained.

16 Q With respect to your conversation with
17 Mr. Heimerle, what if anything else did you say to him?

18 A I don't recall anything else.

19 Q What, if anything else, did you say to him con-
20 cerning the restaurant?

21 A I told him I didn't know where it was.

22 Q What, if anything else, did you say to him
23 concerning that?

24 MR. POLLACK: Objection, your Honor.

25 THE COURT: He is trying to refresh his recollec-

A-14

1 ards McDonell - direct 26
2 tion and he can't so you better stop there and go on to
3 something else.

4 Q Directing your attention to the early morning
5 of February 6, 1976, what, if anything, did you do at that
6 time?

7 A About 2:00 a.m. Special Agent Bisacquino and I
8 went to the Brasserie Restaurant between Park and Lexington
9 on 51st Street.

10 We went downstairs in the coffee shop area and waited
11 for the defendant Heimerle.

12 Q Did there come a time Mr. Heimerle appeared?

13 A Yes. He came down, came into the restaurant
14 and walked up near the table, acknowledged Special Agent
15 Bisacquino and then he said he had a tough time that night
16 because of the snow and asked me to come outside with him.

17 We went out of the restaurant and said, "Come on,
18 let's go, we are going to take a ride."

19 Q Whom do you mean by we?

20 A He and I. He excluded Bisacquino, told me
21 to -- told me to tell her to wait there.

22 Q There being the restaurant?

23 A Yes, wait there.

B5 24 Q What, if anything, happened when you exited the
25 restaurant?

1 ards

McDonnell - direct

27

2 A We went outside and we got into, again, the 1970
3 Pontiac, goldish-brown Pontiac, and we departed west on
4 51st Street, I believe it is, and we proceeded to 47th and
5 Eighth Avenue to the Ramada Inn with a rather evasive pattern
6 through the streets, turning left and right from 51st to
7 47th Street.

8 MR. POLLACK: I object to the characterization.

9 THE COURT: Overruled.

10 Q Continue.

11 A We proceeded through the streets and arrived
12 at the Ramada Inn about 10, 12 or 15 minutes later where
13 the defendant Heimerle told me to come on, come with him.

14 I asked him where are we going. He said we are going
15 to the hotel. We started into the hotel and got on the
16 elevator and I asked Mr. Heimerle where we were going to.

17 He said we were going up to the room to get the stuff.
18 I told him I didn't like to deal in hotel rooms.

19 He said to me if I had known this I wouldn't have
20 dealt with you in the first place. I said I just don't like
21 to deal in hotel rooms.

22 He said, "You can wait in the hall, I will bring it
23 out to you."

24 We went to the 10th floor of the Ramada Inn. I stood
25 in the hallway and he went to room 1026 and knocked on the

ards

McDonnell - direct

28

door. He knocked a few times and there was no answer.

He then came back down the hallway to me and we got into the elevator, went down to the lobby, where he went to the house phone and picked up the phone and asked for somebody's room and name. I couldn't hear that, I was about 2 or 3 steps away from him. I couldn't pick up what the name was.

Then I don't know what happened but there was confusion or something on the phone and he said, "No, no, just give me room 1026."

Then he spoke with someone on the phone and said, "I am down in the lobby. I want you to bring the package downstairs. I will be out in front of the motel."

Heimerle and I then went back to the automobile which was parked on the street outside of the hotel and sat in the car for about 5 minutes. Then an unknown white male came down or came out of the hotel and walked up to the car.

Q Do you see that unknown white male in the courtroom here today?

A Yes, I do.

Q Will you please point him out to the Court and jury?

A The gentleman in the brown sports jacket seated

1 ards McDonell - direct 29

2 to the extreme right of the defense table.

3 MR. LOPEZ: Indicating the defendant Rosenberg.

4 Q What happened then?

5 A Mr. Rosenberg approached the car and leaned up
6 into the car and handed the defendant Heimerle a package
7 and asked him if he had gotten the money yet.

8 Heimerle told him, he didn't respond to it immediately,
9 just said, "I'll be back in 15 or 20 minutes."

10 I took a very good look at Mr. Rosenberg because I
11 know this was important --

12 MR. LOPEZ: Objection.

13 THE COURT: Strike that. You took a good look
14 at Mr. Rosenberg.

15 A I took a good look at Mr. Rosenberg and then we
16 started back toward the restaurant, Heimerle driving, and
17 Heimerle handed me the package.

18 I looked into the package and I found it to contain
19 a large number of counterfeit Federal Reserve Notes.

20 Q Agent McDonell, I am going to show you Govern-
21 ment Exhibit No.8 for Identification. I am going to ask
22 you to examine that and, if you can, identify Exhibit No.8.

23 A These are the notes I received on the morning
24 of 2/6/76 at about 2:30, 2:45 a.m. that morning.

25 Q From whom did you receive those?

ards

McDonell - direct

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A From the defendant Heimerle in the car.

Q Who, if anyone else, did you see have those notes in their possession?

A The defendant Rosenberg gave them to Mr. Heimerle in the car and Heimerle handed them to me.

Q Special Agent McDonell, in addition to currency, I draw your attention to an article which makes up Government Exhibit 8. Can you identify that?

A This is the bag they came in.

Q Referring to the currency?

A These notes in three packages and they bear my initials on them, 2/6/76, all in three packages and crisp then. They weren't in the same form they are now. They were crisp and they were a tighter package than they are now.

Q I draw your attention to these articles also contained within Government Exhibit 8 and ask you if you can identify those?

A Yes, these were around the notes.

Q Could you identify for the Court what these items are?

A \$100 wrappers that were stuck around the notes and bear my initials, around the bills.

Q Special Agent McDonell, how much currency,

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McDonell - direct

31

counterfeit, was contained in this parcel when you received it from Mr. Heimerle?

A That night on the way back from the hotel, from the Ramada Inn, I counted the package which was supposed to contain \$35 thousand and Mr. Heimerle told me, "Don't count it, just merely count out some and measure it up. It is all there."

I counted it out and I came to \$32,600. I counted it specifically to avoid talking to Mr. Heimerle because he was asking me a lot of questions about my background and I really didn't want to answer them.

MR. NAFTALIS: The government moves Government Exhibit 8 for Identification into evidence.

MR. POLLACK: Objection, relevancy, your Honor.

THE COURT: Overruled.

MR. LOPEZ: Just an objection for the record, that is all.

THE COURT: Admitted against both defendants.

(Government Exhibit 8 for Identification received in Evidence.)

Q Special Agent McDonell, what happened, if anything, after you continued your ride back from the hotel?

A After the notes were counted out, Heimerle asked me for the money. I told him that I didn't have it

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McDonell - direct

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with me, it was back at the restaurant with Janie was was
Special Agent Bisacquino.

Heirmerle told me that -- I told Heirmerle that I always
left my money behind with Janie because that was insurance.
That I always left my money behind so nobody could take it
away from me.

Q What, if anything, did he say to you about the
money?

A He didn't like any women around and didn't want
her around any more, don't bring her with me. He said it
was foolish, it was stupid.

I told him that she was a standup girl and that she
was on my end and so on and so forth but if he felt that
way, that I wouldn't bring her. I would come alone next
time.

He said, "No, don't bring her any more, I don't want
her around."

I said, "Okay" and then we pulled up in the area of
the restaurant and he told me to get the money for him and
not to hand the money to him in the car window. He said,
"Don't make it look foolish." So I said I wouldn't and went
down in the restaurant allegedly to get the money.

I met with Special Agent Bisacquino and Bisacquino and
I walked back outside to the official car and we gave the

ards

McDonell - direct

33

prearranged signal for Mr. Heimerle's arrest and a simulated arrest of myself and Special Agent Bisacquino.

B6 Q By official car, will you explain what you mean by that?

A We had an undercover Secret Service Cadillac sedan there and parked in the immediate area of the restaurant and we gave the prearranged signal.

Q What happened after you gave the signal?

A We gave the signal, Mr. Heimerle was arrested by agents of our Service right in the area of the car, sitting behind the steering wheel of the car.

Q What, if anything, happened to you, Special Agent McDonell?

A There was a simulated arrest of myself to project to Mr. Heimerle I was also a defendant at that time. And I spoke with Special Agent Jim Heavey, in charge of the counterfeit section of the office and I told him --

MR. POLLACK: Objection as to relevance, your Honor.

THE COURT: Overruled. Don't tell us what you told him though.

MR. NAFTALIS: This is relevant as concerns the defendant Rosenberg. Can we approach the bench?

THE COURT: Yes.

1 ards

McDonell - direct

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2 (At the side bar.)

3 THE COURT: Why is this relevant, what this
4 witness told his superior?

5 MR. NAFTALIS: Your Honor, he indicated
6 Mr. Rosenberg's description and location of the hotel and
7 at that point the agents then went to the Ramada Inn to ob-
8 tain Mr. Rosenberg based upon the location given by
9 Mr. McDonell.

10 THE COURT: And?

11 MR. NAFTALIS: Mr. McDonell was downstairs and
12 when Mr. Rosenberg came out he positively made the identi-
13 fication for the agents.

14 THE COURT: Are you going to put on other agents
15 as to the arrest?

16 MR. NAFTALIS: Yes, we will.

17 THE COURT: I will take it subject to connection.

18 (In open court.)

19 Q Agent McDonell, would you answer the question,
20 please?

21 A I related to Special Agent Heavey the circum-
22 stances surrounding the time that I had left the restaurant
23 until the time that I came back, including specifically my
24 trip through the streets to the Ramada Inn, to 1026 and
25 provided Special Agent Heavey with a description of the

ards

McDonell - direct

35

person that I saw come down to the car that night.

I told Heavey all this information and then --

Q Where did you go, if any place, at that point in time?

A Drove over to the Ramada Inn with another agent and sat in a car.

Q What, if anything, did you do then after you sat in the car?

A I observed the defendant Rosenberg come outside of the Ramada Inn and identified him for special agents as the individual who had come to the car that night.

MR. NAFTALIS: No further questions, your Honor.

THE COURT: You may cross-examine, Mr. Pollack.

MR. POLLACK: May we have a short recess?

THE COURT: Why?

MR. POLLACK: To digest certain material given us.

THE COURT: Come up here.

(At the side bar.)

THE COURT: What do you want the recess for?

MR. POLLACK: We just got the 3500 material.

THE COURT: Have you just given the 3500 material?

MR. NAFTALIS: Before the witness took the stand.

It is four pages.

THE COURT: Don't you fellows ever learn at all?

1 ards

McDonnell - cross

41

2 that correct?

3 A Correct.

4 Q On February 2nd, 1976 at the second time that
5 you met the co-defendant in this case, at no time was the
6 defendant Rosenberg present, isn't that correct?

7 A Correct.

8 Q And up until that date you didn't even know the
9 existence of the defendant Rosenberg, isn't that also
10 correct?

11 A Correct.

12 Q On February 5, 1976, you told us you met
13 Mr. Heimerle around 1:00 p.m., isn't that correct?

14 A Yes, sir.

15 Q At that time the defendant Rosenberg was not
16 present, isn't that correct?

17 A No, sir.

18 Q When you spoke with the co-defendant approximate-
19 ly 12:00 midnight that night, you spoke with Heimerle, isn't
20 that correct?

21 A Correct.

22 Q No mention of Rosenberg, isn't that right?

23 A Correct.

24 Q When you met in the morning hours of February 6,
25 1976 at La Brasserie between Lexington and Park, it was

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McDonnell - cross

42

the co-defendant that you met, isn't that correct?

A That is correct.

Q Now, the conditions of that evening, as you proceeded to the Ramada Inn, there was a snowstorm, is that correct?

A Yes, sir.

Q You had all your windows closed, isn't that correct?

A Yes.

Q And proceeding slowly through the New York City streets?

MR. NAFTALIS: Objection, there is no testimony concerning speed or --

THE COURT: He said it took 12 minutes to go.

MR. NAFTALIS: He used an evasive route.

THE COURT: He said it took him 12 minutes to go from the Brasserie at 51st Street to the Ramada Inn at 47th Street.

MR. NAFTALIS: Correct, your Honor.

THE COURT: That is slow, isn't it?

MR. NAFTALIS: I am not certain.

THE COURT: You live in New York City?

MR. NAFTALIS: Yes, I do.

THE COURT: You can walk from 51st Street to

ards

McDonnell - cross

45

1

2

Q Was the driver's seat next to the hotel entrance?

3

What was closer to the hotel?

4

A The driver's seat.

5

Q While you were sitting there in the car outside

6

the Ramada Inn, was it still snowing?

7

A I believe it was.

8

Q The snow was falling against the windows of

9

the automobile, isn't that right?

10

A Yes.

11

Q Did you have any lights on in the automobile?

12

A No.

13

Q Did there come a time when you indicated that

14

the second person, Rosenberg, came to the car, is that

15

correct?

16

A Yes.

17

Q As he approached did Heimerle open up the

18

passenger window?

19

A Yes.

20

Q Was it at that time -- it was still snowing,

21

isn't that correct?

22

A It was either snowing or the wind was blowing

23

the snow.

24

Q And at this time is when you saw the package

25

given through the window, is that right?

1

2

A He was, yes.

3

Q You had a designation for him?

4

A Yes, we did.

5

Q That is how you designate him in the report

6

which you prepared, is that not correct?

7

A Yes, sir.

8

Q Is it not a fact that Mr. Mitchell came within

9

the contact of the Secret Service because he had been sub-

10

ject to being arrested for counterfeiting activities?

11

A That is true.

12

Q At the time in question he was under indictment?

13

A I don't believe he was under indictment at that

14

time.

15

Q He was arrested and charged?

16

A Yes.

17

Q And subsequently indicted?

18

A Yes.

19

Q And working for the Secret Service to alleviate

20

any penalty which he might face for this crime?

21

A Yes.

22

Q On the date in question is it not a fact that

23

the bills which you have produced here today were presented

24

to you by Mr. Mitchell in the car, on the 28th?

25

A No, they came from Mr. Heimerle.

A-28

1 ards

McDonell - cross

63

2 A No, not to my knowledge.

3 Q Was Mitchell's cooperation with the Secret
4 Service in return for anticipated consideration in terms
5 of his criminal violation?

6 A To some degree I presume, yes. It was never
7 stated in my presence but I presume that.

8 Q Is it not a fact Mr. Mitchell was intending to
9 be working so that the criminal violation would be lessened?

10 MR.NAFTALIS: Objection, your Honor.

11 THE COURT: He already said he doesn't know.

12 Q Did you have any conversation with Mitchell con-
13 cerning anticipated consideration?

14 A No, sir.

15 Q As to the meeting of February 2, didn't you talk
16 to Mitchell on that date also?

17 A February 2, not necessarily.

18 Q Did you in fact set a meeting up?

19 A Yes, sir.

20 Q And you talked with Mitchell when for this
21 meeting?

22 A It must have been the morning of February 2nd.

23 Q He told you where to go?

24 A Yes, sir.

25 Q And when to be there?

1 ards

McDonell - cross

64

2 A Yes, sir.

3 Q And do you know how this meeting was set up,
4 of personal knowledge?

5 A No, sir.

6 Q Were you present on any conversations prior to
7 this meeting between the defendant Heimerle and Mitchell?

8 A No, sir, not that I can recall.

9 Q Is it not a fact that you had no contact with
10 Mitchell between the 29th and the 2nd?11 A Probably true, yes. I don't recall any contact
12 myself.B10 13 Q Is it not a fact that the contact on the 2nd
14 was the phone call?

15 A From Mitchell?

16 Q Yes.

17 A To whom?

18 Q To you, sir.

19 A No.

20 Q Do you know how contact was made?

21 THE COURT: How did you find out where to meet
22 Heimerle?

23 THE WITNESS: From one of the other agents.

24 Q After the 29th you had no contact with Mitchell
25 at all, personal?

ards

McDonell - cross

65

1

2

A No.

3

Q But you do know that Mitchell set up the meet-

4

ing of the 2nd?

5

A He was there the 2nd.

6

Q The last time you saw him was the 29th?

7

A No, I didn't say that.

8

THE COURT: On direct examination he said

9

Mitchell was present on the 2nd.

10

MR. POLLACK: I know, I'm allowed to cross-examine

11

THE COURT: Go ahead.

12

Q Now, you met Mitchell on the 2nd, correct?

13

A Yes, sir.

14

Q You met him in Joyce's Pub?

15

A Yes, sir.

16

Q But you were not present when the meeting was

17

set up?

18

A No, sir.

19

Q You do not know what Mitchell said to arrange

20

the meeting to the defendant Heimerle?

21

MR. NAFTALIS: This is repetitious.

22

THE COURT: No, he talked about February 2nd

23

now, not the 28th

24

A No, I don't know how the meeting was set up.

25

Q By phone call or in person?

ards

McDonell - cross

66

1
2 A I think it was by phone call. I am not sure.

3 Q You don't know what, if any, inducement Mitchell
4 used to bring Heimerle into Joyce's Pub that day, do you?

5 A No.

6 Q The meeting last how long that day?

7 A About 15 minutes. It was rather short.

8 Q It took place where?

9 A Well, the initial meeting took place between
10 Mitchell, Heimer, and myself inside the bar. Mitchell
11 remained, Heimerle and I went to the car for negotiations
12 in the sale of the notes.

13 Q Sir, is this the last time you saw Julian
14 Mitchell?

15 A Yes, sir.

16 Q Have you seen him since then?

17 A No, sir.

18 Q Subsequent meetings with Mr. Heimerle, how were
19 they arranged, on the 6th?

20 A By telephone.

21 Q Do you know what Mr. Mitchell's relationship
22 with Mr. Heimerle was?

23 A No, I don't other than they knew each other
24 from a bar, I believe. They were -- I think Mr. Heimerle
25 frequented a bar in the Lower Manhattan area back around

arcg 2

Zoma-direct

77

MR. NAFTALIS: If I may beg the Court's indulgence and pass it along to the jury rail instead of passing it and reading it.

THE COURT: Just tell them what it is. It is a conviction for the same crime which the defendant Heimerle is charged here.

MR. NAFTALIS: Thank you, your Honor.

THE COURT: You should tell the jury that it is a conviction of Mr. Heimerle for the same type of crime, not the same factual crime but the same type as charged here occurring on June 18, 1975 in this court.

MR. NAFTALIS: The government calls Samuel Zoma.

SAMUEL ZOMA, called as a witness on behalf of the government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Will you please state what your employment is?

A Special Agent, United States Secret Service.

Q What is your present assignment?

A Office of investigations, New York Field Office.

Q To any specific area?

A Counterfeiting Squad.

arcg 3

Zoma-direct

78

Q I direct your attention to January 28, 1976.
Was your assignment the same as you described here today?

A Yes, sir.

Q What particular assignment had you been given on
that date, if any?

A To effect the surveillance on Second Avenue in
New York City, vicinity of Joyce's Pub.

Q Did there come a time on January 28 that you went
to Joyce's Pub?

A Yes.

Q Approximately what time?

A I arrived there approximately 12:15 p. m.

Q Where did you proceed to go?

A I stayed in the surveillance vehicle parked south
on Second Avenue.

Q What if anything did you then do?

A I maintained surveillance for a period of time.

Q What if anything did you observe?

A At the previous morning we had a briefing at which
time I was advised --

MR. POLLACK: Objection to the previous morning.
The question is what he observed.

THE COURT: Sustained.

Q Mr. Zoma, just indicate what you observed at that

1 arcg 4 Zoma-direct

79

2 time on January 28.

3 A I observed a gold brown older Pontiac pull up
4 in front of Joyce's Pub.

5 Q What if anything did you observe concerning that
6 car?

7 A I saw an individual leave the vehicle from the
8 driver seat and proceed into Joyce's Pub.

9 Q Do you see that man who exited the car present
10 in the courtroom?

11 A Yes, I do.

12 Q Will you please point him out to the court and
13 jury?

14 A Right there (indicating).

15 MR. NAFTALIS: May the record reflect that the
16 defendant Heimerle was identified.

17 MR. POLLACK: Conceded, your Honor.

18 Q Continue, Mr. Zoma. What if anything else did you
19 observe?

20 A Momentarily after that he left Joyce's Pub with
21 an individual I did not know and they talked for a couple of
22 minutes in front of the car and in the car an unidentified
23 individual to me then went back into Joyce's Pub and momen-
24 tarily I saw one of our agents come out of the Pub with this
25 individual and get into Mr. Heimerle's vehicle.

arcg 5

Zoma-direct

80

Q Do you know the name of that agent that entered Mr. Heimerle's vehicle?

A Yes, Francis McDonnell.

Q What did you then observe?

A They left the area and drove around the block and I followed them in the surveillance vehicle.

And they pulled up again in front of Joyce's Pub. I saw Mr. McDonnell get out of the vehicle and go back into Joyce's Pub.

Q What did you see with respect to the other man, the unidentified man?

A He also got out of the vehicle and went into Joyce's Pub.

Q Did they go in the same time?

A I don't recall.

Q Did they exit the vehicle at the same time?

A Yes.

Q Now, I draw your attention, Agent Zoma, to February 2 of 1976.

Was your assignment the same as you previously described?

A Yes.

Q I direct your attention to the afternoon of that date. What was your specific assignment on that date?

1 arcg 6 Zoma-direct 81

2 A To again maintain surveillance in the area of

3 Joyce's Pub, and more specifically, to be inside Joyce's Pub.

4 Q Approximately what time did you arrive at

5 Joyce's Pub?

6 A Say about 12:45 p. m.

7 Q What did you proceed to do?

8 A I sat down in a booth inside Joyce's Pub.

9 Q What if anything did you observe?

10 A I observed the same agent, McDonnell arrive and

11 a few moments later I observed Mr. Heimerle arrive and they

12 left momentarily after that. Approximately 20 minutes later

13 Agent McDonnell came back to the pub.

14 Q When Agent McDonnell and Mr. Heimerle left did

15 you see anyone else leave at that time?

16 A No.

17 Q Did you see anyone else in their joint company

18 during your surveillance?

19 A I don't understand the question.

20 Q Did you see anybody else with Mr. Heimerle and

21 Mr. McDonnell at any time during the course of your

22 surveillance?

23 A No.

24 MR. NAFTALIS: No further questions.

25 THE COURT: Cross-examination.

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arcg 7

Zoma-cross

82

CROSS-EXAMINATION

BY MR. POLLACK:

Q Do you know who the unidentified man that you saw on the 28th is today?

A I know his last name only.

Q What is that, sir?

A Mitchell, I believe.

Q Where did you learn that name?

A At our office, my office.

Q Was that man present on the second?

A I don't recall.

Q Where were you seated at the Pub on the second?

A I was seated at the bar as you walk in to the right. There are some booths to the left. I was sitting in one of those booths with my back to the door.

Q Approximately how far from Agent McDonnell?

A I would say approximately 6 feet.

Q On the 28th you testified you took up your surveillance at 12:15 p. m.?

A P. m., yes, sir.

Q You maintained surveillance for what length of time?

A I would say until approximately 1:30 p. m.

Q You testified that you saw the Brown Pontiac

1 arcg 8 Zoma-cross 83
2 drive up?
3 A Yes.
4 Q What time?
5 A Around 1 p. m.
6 Q You testified you saw the man you identified today
7 whose last name is Mitchell exit the Pub with the driver of
8 that car and talk outside and inside the car, correct?
9 A Yes, sir.
10 Q For what period of time did they talk?
11 A No more than four or five minutes.
12 Q They were alone during that period of time?
13 A Initially, yes.
14 Q Were they seated in the car together?
15 A Yes, I believe they were.
16 Q Both in the front seat?
17 A I don't recall.
18 Q Did they speak for a period of time outside the
19 car?
20 A Yes, they did.
21 Q How far was the car from the Pub?
22 A The car itself?
23 Q Yes.
24 A To the best of my recollection the car was double
25 parked in front of the Pub, no more than 8 feet away from the

1 arcf 9

Zoma-cross /Gilmartin-direct

84

2 curb.

3 Q How long was the defendant Heimele in the Pub
4 before he came out with Mr. Mitchell?

5 A Half a minute; very, very small, in and out.

6 MR. POLLACK: No further questions.

7 MR. LOPEZ: No questions, your Honor, thank you.

8 THE COURT: You may step down.

9 (Witness excused.)

10 MR. NAFTALIS: James Gilmartin.

11
12 J A M E S G I L M A R T I N, called as a witness on
13 behalf of the government being first duly sworn
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. NAFTALIS:

17 Q Mr. Gilmartin, by whom are you employed?

18 A United States Secret Service.

19 Q In what capacity are you so employed?

20 A As a special agent.

21 Q What is your present assignment?

22 A The New York Field Office, Counterfeiting Squad.

23 Q Directing your attention to January 28, 1976,
24 was your assignment the same as you just described?

25 A Yes.

1 arcg 10

Gilmartin-direct

85

2 Q What was your specific assignment on that date?

3 A I was assigned to surveillance of a meeting that
4 was to occur at Joyce's Pub on 50th Street and Second Avenue
5 in Manhattan.

6 Q Did there come a time on that date that you
7 proceeded to go to Joyce's Pub?

8 A Yes, sir.

9 Q Approximately what time did you get there?

10 A Approximately 1 p. m.

11 Q Where did you go?

12 A I entered Joyce's Pub.

13 Q What did you do once you entered?

14 A I went in and went to the bar and ordered a drink.

15 Q Were you seated at the bar?

16 A Yes, sir.

17 Q Did you see anyone else at the bar at that time
18 that you recognized?

19 A Yes, sir.

20 Q Who?

21 A Agent Frank McDonnell and Mitchell.

22 Q How close was Agent McDonnell sitting to you?

23 A Approximately 3 or 4 feet.

24 Q Mr. Mitchell sitting next to him?

25 A Yes, sir.

1 arcg 11

Gilmartin-direct

86

2 Q What if anything happened while you were sitting
3 at the bar? What did you observe?

4 A After, I would say 15 minutes or so, Julian
5 Mitchell exited the bar and returned approximately two or
6 three minutes later and then he and Frank McDonnell exited
7 the bar again.

8 Q Did you observe anything else that day?

9 A Yes, sir. I then exited the bar and observed
10 McDonnell and Mitchell talking to James Heimerle in his
11 vehicle.

12 Q Would you point to the man you just called James
13 Heimerle?

14 A Sitting at the defense counsel table wearing a
15 brown leisure suit and beige shirt.

16 MR. POLLACK: Identification is conceded, your
17 Honor.

18 Q Where was Mr. Heimerle at that time?

19 A He was sitting in his vehicle in the driver's
20 seat in front of Joyce's Pub.

21 Q What if anything else did you observe?

22 A The vehicle then drove south on Second Avenue
23 and made a left turn on 51st Street.

24 Q Who was in this vehicle?

25 A Mr. Heimerle, Agent McDonnell and Mitchell.

A-42

1 arcg 12 Gilmartin-direct 87

2 Q What if anything did you proceed to do?

3 A I entered my vehicle and proceeded to follow Mr.

4 Heimerle's vehicle.

5 Q What if anything else did you observe on that

6 date?

7 A Well, I also made a turn on 51st Street going --

8 correction, 50th Street going toward First and observed

9 upon arrival at First Avenue, I observed Mr. Heimerle's

10 vehicle make a turn onto 51st Street and then he proceeded

11 north to 53rd and went over to First Avenue and drove back

12 down to the vicinity of Joyce's Pub.

13 Q When you got back to the vicinity of Joyce's

14 Pub what if anything did you observe?

15 A I observed Mr. Heimerle's vehicle parked in front

16 of Joyce's Pub and I observed Agent McDonnell and Mr.

17 Mitchell exit Mr. Heimerle's vehicle and go back into Joyce's

18 Pub.

19 Q Did they exit the vehicle together?

20 A Yes, sir.

21 Q And re-enter the pub together?

22 A Yes, sir.

23 Q What if anything did you then do?

24 A I remained in the surveillance vehicle and then

25 maintained surveillance on Joyce's Pub.

A-43

1 arcg 13

Gilmartin-direct

88

2 Mr. Heimerle drove away then and I waited until
3 Mr. Mitchell and Agent McDonnell left the Pub and then
4 subsequently met Agent McDonnell.

5 Q Special Agent Gilmartin, I direct your attention
6 to February 2, 1976.

7 Was your assignment the same as you described?

8 A Yes, sir.

9 Q What specifically was your assignment on the
10 afternoon of February 2nd, 1976?

11 A I was assigned again to surveillance of a meeting
12 between Mr. Heimerle and Mr. McDonnell and I was to take
13 photographs of the meeting.

14 Q Did there come a time that you took photographs
15 of that meeting?

16 A Yes, sir.

17 Q Agent Gilmartin, I ask you to examine Government
18 7 for identification. I ask you if you can identify that?

19 A Yes, sir.

20 Q Would you please describe to the Court and jury
21 what Government Exhibit 7 is?

22 A The photographs I took on February 2nd of the
23 meeting between McDonnell and James Heimerle at Joyce's Pub.

24 Q Agent Gilmartin, are these photographs numbered
25 specifically?

1 | arcg 14

2 A Yes, sir.

3 Q I direct your attention to photograph number 12.

4 Can you identify the person photographed in that photograph,
5 number 12?

6 A Yes, sir.

7 Q Would you please tell the Court and jury who that
8 is?

9. A James Heimerle.

10 Q And where was that picture taken?

11 A In front of Joyce's Pub.

12 Q And photograph 13?

13 A Yes, I can identify him.

14 Q Would you identify who that is?

15 A Agent McDonnell.

16 Q What if anything is he doing in this photograph?

17 A Entering James Heimerle's vehicle.

18 Q I direct your attention to photograph 24.

19 Please describe what is in that photograph.

20 A A photograph of James Heimerle sitting behind
21 the driver's wheel, the steering wheel of his vehicle.

22 Q Agent Gilmartin, could you indicate to the Court
23 and jury the way that these prints were developed?

24 A These photographs were taken off a mirror so they
25 are reversed mirror images. In the photograph the vehicle

A-45

1 arcg 15 Gilmartin-direct 90
2 was facing toward the left but in reality it was actually
3 facing toward the right.
4 Q The steering wheel may appear to be on the right
5 but in actuality it is on the left?
6 A Yes, sir.
7 Q That is the way the photographs were taken off
8 the mirror?
9 A Yes, sir.
10 Q In the photograph you took of this meeting on
11 February 2nd, what person did you photograph within the
12 surveilled vehicle?
13 A James Heimerle and Agent Frank McDonnell.
14 Q Anyone else in this vehicle at any time during
15 the course of your surveillance?
16 A No.
17 Q In the course of your photographing?
18 A No, sir.
19 MR. NAFTALIS: The government offers Government
20 Exhibit 7 into evidence.
21 MR. LOPEZ: Your Honor, I have that continuing
22 objection?
23 THE COURT: Yes. These are now at this point
24 offered solely against the defendant Heimerle as I told you
25 yesterday.

A-46

1 arcg 16

Gilmartin-direct

91

2 MR. POLLACK: Judge, the only objection I have
3 is clarity.

4 THE COURT: Let me see them.

5 (Handed to Court.)

6 THE COURT: A lot of them don't mean anything I
7 admit that. Why do you have two sets of them?

8 MR. NAFTALIS: It is a duplicate set. There are
9 two contact sheets.

10 THE COURT: You don't need two, do you?

11 MR. NAFTALIS: I brought the additional one for
12 inspection by the defense.

13 THE COURT: Don't put both in evidence.

14 MR. NAFTALIS: The top ones are a bit dark.

15 THE COURT: I will give you the darker one back.

16 MR. NAFTALIS: I mean it is a little more
17 legible.

18 THE COURT: I will let them in.

XXX 19 (Government Exhibit 7 for identification received
20 in evidence.)

21 Q Agent Gilmartin, the photograph number 4 in the
22 sequence, would you please describe what photograph number
23 4 is a photograph of?

24 A It is a photograph of the street address appearing
25 on the canopy of Joyce's Pub.

1 arcg 17

2 Q What is that address?

3 A 948 Second Avenue.

14 4 Q What if anything else did you observe on that
5 day?

6 A On February 2nd?

7 Q February 2nd, I am sorry.

8 A I continued to observe the vehicle and McDonnell
9 and Mr. Heimerle were in the vehicle from approximately
10 a half hour to 45 minutes.

11 At the end of their meeting Agent McDonnell
12 exited the vehicle and re-entered Joyce's Pub and Mr. Heimerle
13 drove away.

14 Q At any time in the course of your surveillance
15 were Mr. Heimerle and Agent McDonnell joined by anybody else
16 in the automobile?

17 A No.

18 Q At any time in the course of the surveillance
19 did you see James Heimerle speak with any other person other
20 than Special Agent McDonnell?

21 A No, sir.

22 Q Did you see any other person in Mr. Heimerle's
23 vehicle other than Mr. Heimerle or Special Agent McDonnell?

24 A No, sir.

25 Q Did you see James Heimerle at any time in the

A-48

1 arcg 18

Gilmartin-direct/Chodash-direct 93

2 course of that meeting speak with Julian Mitchell?

3 A No, sir.

4 MR. NAFTALIS: No further questions, your Honor.

5 THE COURT: Mr. Pollack?

6 MR. POLLACK: No questions, your Honor.

7 MR. LOPEZ: No questions, your Honor.

8 THE COURT: You may step down.

9 (Witness excused.)

10 MR. NAFTALIS: The government calls Terry
11 Chodash.

12
13 T E R R Y H O W A R D C H O D A S H, called as a
14 witness on behalf of the government being first
15 duly sworn was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. NAFTALIS:

18 Q By whom are you employed?

19 A United States Secret Service.

20 Q What is your assignment?

21 A I am with the Counterfeiting Squad, New York
22 Field Office.

23 Q Was that your assignment on January 28, 1976?

24 A Yes, sir, it was.

25 Q On that date what was your specific assignment

A-49

1 ards Chodash - direct 103
2 A Well --
3 MR. POLLACK: I object to this, hearsay.
4 THE COURT: Overruled.
5 A He used the name Julian Harvey; Julian Mossip.
6 That is all I can recall right now.
7 Q Do you recall any other first names other than
8 Julian?
9 A No, I don't.
10 Q Agent Chodash, you indicated that you were the
11 arresting officer for Mr. Mitchell?
12 A That is correct.
13 Q What was he arrested for?
14 A Possession of counterfeit money.
15 Q Do you know the present situation in respect
16 to Mr. Mitchell with respect to that arrest?
17 A Yes. He is currently under indictment in the
18 Southern District of New York, possession of counterfeit
19 money.
20 Q At the time of the arrest until January 28
21 he cooperated with the government?
22 A From the time of the arrest.
23 Q From the time of the arrest --
24 THE COURT: What was the date of the arrest?
25 A I arrested Mitchell, January 26, 1976.

ards

Chodash - direct

104

1
2 Q January 26, 1976 to January 28, 1976, did
3 Julian Mitchell cooperate with the government?

4 A Yes, he did.

5 Q During the course of the period of cooperation
6 did you, on behalf of the Secret Service, make any promises
7 to Mr. Mitchell?

8 A No, I did not.

9 Q What is the reason you did not?

10 A Well, it is our agency's policy not to make any
11 promises to anybody in reference to things like that.

12 Q Did you make any statement to him whatsoever
13 concerning what the Secret Service may or may not do in
14 exchange for Mr. Mitchell's cooperation?

15 A Well, Mr. Mitchell was advised in the event he
16 cooperated we would make it known to the Assistant United
17 States Attorney handling the case and to the sentencing
18 judge. That was the extent of what we told Mr. Mitchell
19 in reference to what would happen.

20 Q Any promises at any time made concerning recom-
21 mendations as to sentence?

22 A No, not that I recall.

23 Q Was Mr. Mitchell at any time paid any money by
24 you in exchange for his cooperation?

25 A No, he wasn't.

A-51

ards

Bisacquino - direct

117

Bisacquino.

Could I approach the bench a moment?

(At the side bar.)

MR. NAFTALIS: Just to clarify what the Court's ruling is. On this sheet it does say Jules and Mr. Chodash mentioned one of the first names, he knew Mr. Mitchell used the name Jules. On that basis I think it establishes it.

THE COURT: What was the date of Monday?

MR. NAFTALIS: It would have been the 26th.

THE COURT: That is right, and he couldn't have a date with Jules relative to McDonell on Monday because they didn't pick Mitchell up until 10:00 o'clock that night.

MR. NAFTALIS: If I may, McDonell's testimony was that the first buy had been for counterfeit, that Mitchell negotiated the purchase for himself and that McDonell --

THE COURT: I won't let it in, it is too vague.

(In open court.)

J A N E B I S A C Q U I N O, called as a witness

on behalf of the government, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Miss Bisacquino, how are you employed?

A-52

1 ards Bisacquino - direct 118

2 A United States Secret Service.

3 Q What is your job there?

4 A Special agent.

5 Q Where are you assigned?

6 A New York field office.

7 Q I draw your attention to February 5, 1976. Were

8 you on assignment in the Secret Service on that date?

9 A Yes, I was.

10 Q Will you indicate what your assignment was on

11 February 5, 1976?

12 A I was in an undercover capacity with Special

13 Agent Frank McDonell in a counterfeiting investigation.

14 Q Where, if any place, were you sent with respect

15 to this undercover capacity?

16 A That afternoon we went to Joyce's Pub which

17 is on Second Avenue in the 50's.

18 Q Did there come a time in the course of your

19 stay at Joyce's Pub that you were joined by another person?

20 A Yes.

21 Q Which person was that?

22 A James Heimerle.

23 Q Do you see Mr. Heimerle present in the courtroom

24 today?

25 A Yes.

A-53

Bisacquino - direct

119

ards

Q Will you point him out to the Court and jury?

A The gentleman right there (indicating).

MR. NAFTALIS: Pointing to the defendant, James Heimerle.

THE COURT: Which gentleman? There are four people seated at the table. Which one?

THE WITNESS: The second gentleman from --

MR. POLLACK: This gentleman? The identification is conceded, your Honor.

Q What, if anything, did you observe concerning Mr. Heimerle?

A Mr. Heimerle came into the bar, came over to Frank and I and asked to speak with Frank outside.

We invited him to have a drink with us and he said that he wanted to speak to Frank outside.

Q Were you introduced to Mr. Heimerle?

A Yes, I was.

Q In what way were you introduced?

A He was called Jimmy.

Q In what capacity would you say that you were there?

A I was supposed to be Frank McDonnell's girlfriend.

Q Approximately what time did this meeting take place?

A-54

1 ards Bisacquino - direct 120
2 A Sometime around 1:00 o'clock in the afternoon.
3 Q What, if anything, did you observe after
4 Mr. Heimerle asked Special Agent McDonell to leave the bar?
5 A Both of them got up and left and walked out.
6 Q What, if anything, happened then?
7 A I waited, I would say, around 15 minutes or so,
8 15 or 20 minutes, and Frank McDonell returned to the bar
9 alone and then we left the bar and proceeded back to the
10 office.
11 Q Drawing your attention to the evening of
12 February 5, I mean the late evening around midnight, the
13 transition period from February 5 and 6, 1976, were you on
14 duty at that time?
15 A Yes, I was.
16 Q Where were you physically?
17 A I was in the field office.
18 Q Were you alone?
19 A No, I was not.
20 Q Who else was with you?
21 A Frank McDonell.
22 Q What, if anything, did you observe him do?
23 A Frank dialed a telephone number that was given
24 to him that day by Jimmy. I was present when he had the
25 conversation with him.

1 ards

Bisacquino - direct

121

2 Q What, if anything, did you say during the course
3 of that conversation?

4 A I was there so as to give credence to the cover
5 that I was Frank's girlfriend and that Frank was from
6 Philadelphia and I was from New York.

7 We had a meeting at the Brasserie and I spoke up
8 in a loud enough voice so the other person on the other side
9 would hear. I said that I know where the place is, don't
10 worry about it, we will find it.

11 Q After that telephone call was terminated, what,
12 if anything, did you do that morning of February 6, right
13 after that call was over?

14 A We went up to the Brasserie on, I think, 51st
15 Street, I am not sure.

16 Q Did you go alone?

17 A Frank McDonell and I went into the restaurant.

18 Q During the course of your staying at the
19 La Brasserie Restaurant, did there come a time that you
20 were joined by any other person?

21 A Yes.

22 Q By whom?

23 A James Heimerle.

24 Q What, if anything, did he say or do?

25 A He came into the restaurant and we invited him

ards

Bisacquino - direct

122

to have coffee with us and he turned to Frank and said,
"I want you to go for a ride" or speak to him outside, something to that effect.

Q What, if anything, did you then observe?

A The two, Frank and Jimmy, left the restaurant.

Q Approximately what time of day was that?

A I would say between 2:00 and 2:30 in the morning.

Q What, if anything, did you then observe?

A I stayed in the restaurant for possibly a half-hour and Frank returned at that time and we both left the restaurant.

Q Was he alone when he returned?

A In the restaurant, yes, he was by himself.

Q When you returned to the exterior of the restaurant was there anyone else?

A When we left the restaurant Jimmy was sitting in a car and Frank and I walked over to the Secret Service undercover vehicle and gave the prearranged signal for the surveilling agents in the area to come and arrest Jimmy and Frank and I.

Q Was that to be an actual arrest of yourself and Special Agent McDonell?

A No, put handcuffs and put us in the vehicle as if we were being arrested.

A-57

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Bisacquino -- direct

123

Q To simulate an arrest?

A Yes.

Q What was the reason given to Mr. Heimerle for you and Special Agent McDonell to go to your vehicle?

A I was to get the buy money.

Q To obtain what?

A The counterfeit notes.

Q Directing your attention to this same morning, what, if anything else, did you do after the simulated arrest took place?

A We then proceeded, the Secret Service agents and I proceeded to the Ramada Inn in the 40's and went up to room, I think, 1026.

Q Were you alone when you went up?

A No, I was not.

Q Other than yourself, who was present?

A I can't recall everyone, but I believe --

Q Secret Service agents?

A Yes.

Q Was there a member of the hotel personnel with you?

A Yes.

Q When you got to the room, what, if anything, did you observe?

A-58.

ards

Bisacquino - direct/cross

124

A A gentleman was in the room and --

Q Which gentleman? Is that gentleman present in court today?

A Yes.

Q Will you please point him out?

A The last gentleman on that --

MR. LOPEZ: Indicating Rosenberg, your Honor.

Q What, if anything, occurred?

A The entire room was searched and the gentleman was placed under arrest.

Q After the arrest, was any luggage or anything else found in the room?

A Not that I can recall. I really don't remember what exactly was taken.

Q Did you find any luggage?

A Myself, no.

MR. NAFTALIS: No further questions.

MR. POLLACK: No questions, your Honor.

CROSS-EXAMINATION

BY MR. LOPEZ:

Q Was any counterfeit money found in the room where Mr. Rosenberg was staying?

A I did not find any counterfeit money.

Q Do you know what personal effects were taken?

1 ards

Bisacquino - cross

125

2 A No.

3 MR. LOPEZ: Thank you, no further questions.

THE COURT: You may step down.

5 (Witness excused.)

6 MR. NAFTALIS: Your Honor, the United States
7 calls George Hemmer.

8 G E O R G E P. H E M M E R, J R., called as a witness
9 on behalf of the government, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NAFTALIS:

13 Q Mr. Hemmer, by whom are you employed?

14 A I am employed by the United States Treasury
15 Department as a special agent, United States Secret Service.

16 Q What is your assignment?

17 A I am assigned to the New York field office as
18 an agent working in the counterfeit squad.

19 Q I direct your attention to the late evening
20 of February 5, 1976 and the early morning hours of
21 February 6, 1976; more specifically, the time around mid-
22 night separating the two days.

23 Were you on duty at that time?

24 A Yes, I was.

25 Q What was your assignment at that time?

A-68

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ards Hemmer - direct 126

A At that time I was conducting a surveillance in the Cropsey Avenue vicinity of Brooklyn, specifically two telephone coin boxes located on the front wall of the Pathmark Supermarket.

Q In the course of your surveillance did you observe anything?

A Yes, I did.

Q What, if anything, did you observe?

A Prior to midnight I observed James Heimerle drive into the Pathmark Supermarket.

Q You indicated you observed James Heimerle. Is he present here in the courtroom today?

A Yes, he is.

Q Could you please indicate him to the Court and jury?

A The man seated second from the left at the defense table.

MR. NAFTALIS: May the record reflect that the defendant Heimerle --

MR. POLLACK: Conceded, your Honor.

Q What, if anything, did you observe Mr. Heimerle do after he drove into the parking lot?

A I observed him pull his car up toward the front of the supermarket, sit in the car for a period of time.

ards

Hemmer - direct

127

I then observed him get out of the car, walk toward one of the coin booths, not a booth actually, a wall phone and picked up the receiver.

Q That is a public telephone?

A Yes, it is.

Q Did you observe him speak into the phone?

A He appeared to be speaking into the phone.

Q Did you see him dial any telephone number?

A No, I did not. I observed only picking up the receiver and it appeared he was engaged in conversation.

Q What, if anything, did you see after he terminated that telephone call?

A After he terminated the telephone call he re-entered his vehicle and parted the area. Also, at this time, previous to Mr. Heimerle's arrival at the supermarket parking lot, I recorded the number on the coin box.

Q What was the number?

A I believe it was 266-8698.

Q Special Agent Hemmer, at what time did you see the defendant Heimerle go over to the telephone?

A I believe it was -- I don't believe it was exactly midnight, maybe 11:59, something like that. Around midnight.

MR. NAFTALIS: No further questions.

1 ards Hemmer - cross 135
2 A No.
3 MR. LOPEZ: Thank you.
4 THE COURT: You may step down.
5 (Witness excused.)
6 MR. NAFTALIS: John Flynn.
7 J O H N F L Y N N, called as a witness on
8 behalf of the government, being first duly sworn,
9 testified as follows:
10 DIRECT EXAMINATION
11 BY MR. NAFTALIS:
12 Q Mr. Flynn, will you please keep your voice up
13 a bit?
14 Mr. Flynn, by whom are you employed?
15 A By Loews Corporation at the Ramada Inn, 790 Eight
16 Avenue.
17 Q What is your job there?
18 A Night manager.
19 Q Mr. Flynn, were you on duty the night of February
20 5 and the morning of February 6, 1976?
21 A Yes, I was.
22 Q Mr. Flynn, I show you Government Exhibit 13 for
23 Identification. I ask you to examine these two documents.
24 Can you identify them, please, for the Court and jury?
25 A Yes.

ards

Flynn - direct

136

Q Would you please describe each of them to identify them for the jury?

A This is a registration card and the top if filled in by the guest and the bottom here, half with the room number and the number of people, the rate, and this is my identification, how I identify it; whether or not he had a reservation and the type of reservation.

Q Now, Mr. Flynn, directing your attention to this document, the portion that you indicated was prepared by the hotel, did you prepare this on behalf of the hotel?

A Yes, I did.

Q In your capacity as night manager?

A Right.

Q Mr. Flynn, did the person who prepared this form, did he have a reservation?

A No.

Q Mr. Flynn, how was payment made to you for that room?

A In advance.

Q Mr. Flynn, did you put --

A It is so indicated.

Q Did you put any markings reflecting the time or time of day that the person checked in?

A Yes, there is a time stamp on there.

A-64

1 ards

Flynn - direct

137

2 I can't read it with this light. There is a time
3 stamp there.

4 THE COURT: Ask counsel whether they concede what
5 the times are.

6 MR. NAFTALIS: Your Honor, defense has no objec-
7 tion. I would like to pass this to the jury. Mr. Flynn was
8 unable to read it.

9 THE COURT: What is it?

10 MR. NAFTALIS: February 6 at 1:59 a.m.

11 Q That date stamp, Mr. Flynn, would be the time
12 that the person checked in?

13 A Exactly.

14 Q Do you recall the person who filled out this
15 form, whether or not he had luggage?

16 A He had no luggage.

17 Q And, Mr. Flynn, can you indicate to the jury the
18 name of the person who checked in?

19 A Henry Regan.

20 Q What address was given?

21 A 1712 Collins Avenue, Boston, Mass.

22 Q What room was assigned to Mr. Regan?

23 A 1026.

24 Q When Mr. Regan checked in was he asked to produce
25 identification?

A-65

ards

Flynn - direct

138

A No.

Q Mr. Flynn, I ask you to look around the court-room. Do you see the man here who checked in under the name of Henry Regan at the Ramada Inn at that time?

A Yes, the gentleman on the end over there.

MR. NAFTALIS: May the record indicate that he has identified the defendant Harold Rosenberg.

Q Mr. Flynn, I ask you to look at the second document, also part of Government Exhibit 13. Can you please indicate to the Court and Jury what that is for?

A This is the bill made out from this, which room number, with the name of the guest, the amount of the room, with the city sales tax, state tax, key deposit, date check-in and date check-out and advance payment.

Q Mr. Flynn, who prepares this second document?

A I do. This is mine because this is my F on there too.

Q Mr. Flynn, how many nights was this room rented?

A One night. The check-out 1:00 o'clock the following day, the same day.

Q February 6?

A That's right.

MR. NAFTALIS: The government offers these into evidence.

1 ards Flynn - direct/cross 139

2 MR. LOPEZ: No objection, your Honor.

xx 3 (Government Exhibit 13 for Identification re-
4 ceived in Evidence.)

5 MR. NAFTALIS: No further questions.

6 MR. LOPEZ: May I, your Honor?

7 CROSS-EXAMINATION

8 BY MR. LOPEZ:

9 Q Mr. Flynn, would you please tell the jury what
10 kind of night it was on February 5 and 6, 1976?

11 A I can't remember the time of night.

12 Q You can't remember?

13 A No.

14 Q Was it raining, a dry night?

15 A I can't remember, sir.

16 Q You can't remember?

17 A No.

18 Q Do you remember if on that night the hotel was
19 particularly full?

20 A No.

21 Q Is it unusual for the Ramada Inn to accept
22 cash for payment of its room services?

23 A No, sir.

24 Q Is it unusual for you to have guests check in
25 without any luggage?

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Flynn - cross

140

A No, sir.

Q Sir, was there any unusual procedure followed in the registration of this card?

A No, sir.

Q You indicated to us that the person who filled out this card was the gentleman who you identified as Mr. Rosenberg, is that correct?

A Yes, sir.

Q Assuming that that the person's name is Mr. Rosenberg on the evening of registration, you at telling us that the only time you saw him that evening was at the time that he was at the desk registering?

A No, I recall him when they took him out.

B20 Q In other words, when the agents came and he was arrested you saw him then also, is that correct?

A When they took him out when he came in.

Q Those are the only two occasions that you saw him?

A That's right.

Q Between the time that he registered and the time that the special agents took him out you did not see him, is that correct?

A That is as far as I can remember.

Q You were, of course, the night manager at a desk

ards

Antolos - direct

143

Q Do you recall whether or not Mr. Rosenberg had any baggage with him when he checked in?

A He no have no luggage.

Q Did there come a time -- did you take him to his room?

A Yes.

Q What room number was that?

A 1026.

Q Did you let him into that room?

A Yes, I let him in.

Q Before he went up to the room, did Mr. Rosenberg want you to go up with him?

A Mr. Rosenberg checked in, he wanted -- asked for the key, he want to go up by himself.

Q He indicated he did not want the bellhop to go up with him?

A Yes.

Q Why did you go up with him?

MR. LOPEZ: Objection.

THE COURT: Sustained.

Q Did you go up to the room with him?

A Yes, I am going up.

Q Did you let him into the room?

A Yes, I let him into the room.

A-69

ards

Antolos - direct

144

Q Did you give the key to the ~~room~~?

A Then I left the key on the desk.

Q After he checked in did there ever come a time that you saw him outside that room?

A I saw him outside before when I checked him out.

Q What did you see him do?

A Walk outside in the front door. He talk with somebody in a car.

Q Do you know what the man in the car looked like?

A Only see him from the door, he got like light brown hair.

Q Mr. Antolos, did there come a time later that evening or early morning that you saw Mr. Rosenberg again?

A I only see him later with the Secret Service bringing him down to the lobby.

Q When the Secret Service came to the hotel did you go up to the room 1026 with them?

A Yes, when they come in the hotel they talk to Mr. Flynn. So he is night manager, he give the key to me and said, "Open the door for him."

Q You went to 1026?

A I opened the door for the Secret Service.

Q Then what did you do?

A When everybody go in I go with them and one of

1 ards

leavey - direct

152

2 file. Will Mr. Pollack stipulate as to the accuracy of
3 these files and as to the actual existence of that conviction?
4 I have the entire file here.

5 MR. POLLACK: I haven't seen the file yet. I
6 will go over it.

7 THE COURT: Look at it during the recess.

8 (Recess)

9 (Jury present.)

10 MR. NAFTALIS: The government calls James Heavey.

11 J A M E S E D W A R D H E A V E Y, called as a
12 witness on behalf of the government, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. NAFTALIS:

16 Q Mr. Heavey, by whom are you employed?

17 A With the United States Secret Service.

18 Q What is your title and assignment?

19 A I am assistant to the special agent in charge,
20 in charge of the counterfeiting squad in the New York field
21 office.

22 Q How long have you been a special agent of the
23 United States Secret Service?

24 A Since 1965.

25 Q 11 years?

A-11.

1 ards Heavey - direct 153

2 A Right.

3 Q Of the 11 years you have been with the Secret
4 Service, how many years have been with the counterfeiting
5 area?

6 A Since 1965.

7 Q Four the full 11 years?

8 A That is correct.

9 Q Special Agent Heavey, were you on assignment
10 in the New York field office on January 27, 1976?

11 A Yes, I was.

12 Q I am going to show you Government Exhibit 2 in
13 Evidence and ask you if you can identify that?

14 A May I take it out of the folder?

15 Q Yes.

16 A Yes, sir.

17 Q Would you indicate to the Court and jury exactly
18 what that is?

19 A It is a Xerox of marked money which I gave to
20 Special Agent Frank McDonell for the purposes of making
21 an undercover buy.

22 Q How do you know it is a Xerox of that money?

23 A I have my initials on it, JEH, and the date
24 1/26/76, which I placed on there after I Xeroxed the money.

25 Q Special Agent Heavey, were you on assignment

1 ards Heavey - direct 154
2 with the Secret Service on the morning of February 6, 1976?
3 A Yes, I was.
4 Q Do you know a man named James Heimerle?
5 A Yes.
6 Q Do you see him present in the courtroom?
7 A Yes.
8 Q Will you point him out?
9 A The gentleman in the brown leisure suit with
10 the tan colored shirt, mustache, mod haircut.
11 MR. POLLACK: Conceded, your Honor.
12 Q On the morning of February 6, 1976, did you
13 see Mr. Heimerle?
14 A Yes, I did.
15 Q In what connection did you see him?
16 A I was engaged in surveillance.
17 Q What did that surveillance culminate in?
18 A An arrest.
19 Q Of whom?
20 A Mr. James Heimerle.
21 Q For what offense?
22 A Sale of counterfeit one hundred-dollar Federal
23 Reserve Notes.
24 Q As a consequence of your arrest of Mr. Heimerle,
25 did you take into your possession property on the person of

1 ards

Heavey - direct

155

2 Mr. Heimerle?

3 A Yes, sir.

4 Q I ask you to examine Government Exhibit 1 for
5 Identification. I ask you if you can identify it?

6 A It is a genuine \$100 Federal Reserve Note,
7 dated 2/6/76, with my initial, JEH.

8 Q Do you know how those initials and the date
9 got on there?

10 A Yes, sir. I placed them on there.

11 Q When?

12 A On February 6, 1976.

13 Q Where did you obtain this \$100 bill from?

14 A From Mr. Heimerle.

15 Q From his person?

16 A Yes, sir.

17 Q I ask you to examine that \$100 bill, Government
18 Exhibit 1 for Identification, and also compare it to Govern-
19 ment Exhibit No.2 in Evidence.

20 Mr. Heavey, what does your examination disclose?

21 A This \$100 bill was taken off Mr. Heimerle and
22 is part of the marked money which I Xeroxed and recorded
23 on January 27, 1976.

24 Q Do you know what that marked money was used for?

25 A Yes, sir, to purchase counterfeit notes.

A-74

1 ards Heavey - direct 156

2 Q By whom and what date?

3 A Special Agent Frank McDonell on January 28, 1976.

4 MR. NAFTALIS: Your Honor, I move Government
5 Exhibit 1 for Identification in to evidence.

6 THE COURT: Any objection?

7 MR. POLLACK: Objection for the record, your
8 Honor.

9 THE COURT: Overruled.

10 MR. LOPEZ: Objection as to Rosenberg, the same
11 ground.

12 THE COURT: It is limited solely to the defendant
13 Heimerle at this point.

14 MR. NAFTALIS: If there is no objection from
15 the defense, the government would like to mark and use in
16 substitution a Xerox copy of the genuine \$100 bill.

17 MR. POLLACK: No objection.

xx 18 (Government Exhibit 1 received in Evidence.)

19 MR. NAFTALIS: This is 1A, your Honor.

xx 20 (Government Exhibit 1A received in Evidence.)

B22 21 Q Agent Heavey, you have indicated that you have
22 been a special agent for 11 years and worked in the counter-
23 feiting area for 11 years?

24 A That is correct.

25 Q Have you received during the course of your time
with the Secret Service any training?

A-75

ards

Heavey - direct

157

A Yes, sir, I have.

Q Could you indicate to the Court and jury the nature and type of your training?

A We received approximately 3 months training at the Treasury Agent School as well as the Secret Service Special Agent School to investigate cases, counterfeiting cases as well as general cases, and to be able to detect counterfeit United States currency upon our examination of the currency.

Q Have you been trained to examine currency and identify it whether it is genuine or counterfeit United States Treasury Notes?

A That is correct, pertaining to United States currency.

MR. NAFTALIS: Your Honor, I have indicated to the defense that I was qualifying Special Agent Heavey as an expert in the area of counterfeit detection.

THE COURT: Any objection?

MR. LOPEZ: No, sir.

MR. POLLACK: No, your Honor.

THE COURT: All right.

MR. NAFTALIS: I propose to ask him only with respect to currency.

Q Agent Heavey, I show you Government Exhibits 4,

A-76

1 ards Heavey - direct 158

2 6 and 8 marked into evidence. I will ask you to examine
3 those for a moment and ask if you have seen them before?

4 A Yes, I have seen it.

5 Q In what connection have you had an opportunity
6 to examine this counterfeit before?

7 A These were notes which were taken off Mr. Heimerle
8 at the time of his arrest on February 6.

9 Q Referring to Government Exhibit 8?

10 A That is correct.

11 Q And have you seen Government Exhibit 4 and 6 prior
12 to this date?

13 A Yes.

14 Q Do you know what they are?

15 A Counterfeit notes.

16 Q Have you had an opportunity to examine each and
17 every one of these notes prior to your appearance here today?

18 A Yes, I have.

19 Q Special Agent Heavey, after examining all the
20 notes contained in Government Exhibits 4, 6 and 8 in Evidence
21 what is your opinion as to their genuineness or the counter-
22 feit quality?

23 A All these notes are counterfeit notes, counter-
24 feit Federal Reserve Notes.

25 Q Special Agent Heavey, I am going to show you

A-77

ards

172

to dismiss the indictment based on the government's failure to present a prima facie case under Rule 29.

THE COURT: Motion denied.

MR. LOPEZ: Your Honor, the defendant Rosenberg moves, pursuant to Rule 29, for a dismissal of the indictment based on the government's case, more particularly, your Honor, we especially stress Count 4 of the indictment charging Mr. Rosenberg with an ongoing conspiracy with the co-defendant from on or about January 28.

At most, the evidence in the case tends to indicate a participation for the first time by Mr. Rosenberg as far as the third count of the indictment is concerned, the substantive count charging possession with intent to distribute.

As far as the conspiracy count, your Honor, I think there is an insufficient amount of proof to be able to place him with the co-defendant on this case.

THE COURT: Mr. Naftalis?

MR. NAFTALIS: Your Honor, I only say in answer to Mr. Lopez' motion on the dates in the indictment, they are approximate and there is substantial opinion in respect to the dates are approximate. If the dates are inaccurate as to the length of that conspiracy, this is not a factor for the jury. The major factor is so long as they can

ards

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determine a conspiracy to effect the end as stipulated in Count 4 did exist. The United States made out a prima facie case that such a conspiracy did exist. There are references by the defendant Heimerle to Special Agent McDonnell that he had to get the notes from his people, an indication that he was involved with other persons than himself.

And, your Honor, the government maintains that certainly as to Mr. Rosenberg the evidence points out that he had a role in respect to this sale and if you examine the conspiracy count, the conspiracy count deals with the sale of 326 Federal Reserve Notes, the sale of which was effectuated in the early morning hours of February 6. There is not a charge that Mr. Rosenberg conspired with the two prior batches of 5,000 each of counterfeit \$100 bills. The prima facie case certainly made out the existence of the conspiracy and the involvement of Mr. Rosenberg.

THE COURT: The only evidence against him though makes him guilty of the substantive count or not at all. What proof do you have of Rosenberg conspiring, aside from proof that makes him guilty of the substantive count? That is my point.

MR. NAFTALIS: The jury can draw fair inferences. One of the witnesses for the government testified to the

1 ards

2 fact that when Mr. Rosenberg got to the hotel, before he
3 went up to the room he went and conferred on the street
4 with a brown-haired individual sitting in the automobile.

5 THE COURT: That is all the substantive count.

6 MR. NAFTALIS: Your Honor, the government is
7 saying that those acts are in furtherance of the conspiracy
8 to distribute this 326 counterfeit \$100 notes and the
9 length of the conspiracy is approximate. It is stipulated
10 in the --

11 THE COURT: I am not worried about that. I am
12 worried about the fact that the only testimony that you
13 have against Rosenberg is the same testimony for the sub-
14 stantive count which is the identification on February 6.
15 That is all you have on him.

16 MR. NAFTALIS: We do have a statement on
17 February 5, by Heimerle to McDonell, stating that he had
18 to reach out to his people to obtain the counterfeit.

19 THE COURT: That is still, isn't it, the sale?

20 MR. NAFTALIS: Your Honor, the sale did not go
21 on until the 6th, the conspiracy is the attempt to distribute
22 counterfeit.

23 THE COURT: Motion denied, Mr. Lopez.

24 MR. LOPEZ: I have another application, your
25 Honor.

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Heimerle - direct

178

THE COURT: Mr. Pollack.

MR. POLLACK: The defendant calls James Heimerle
to the stand.

JAMES HEIMERLE, called as a witness
on his own behalf, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. POLLACK:

Q Mr. Heimerle, would you please keep your voice
up so that the people in the rear of the jury box can hear
you?

How old are you?

A 38.

Q Where do you reside?

A 2833 West 15 Street.

Q Is it a private home?

A An apartment with my family, parents.

Q Both of your parents alive?

A Yes.

Q Are you married, sir?

A Yes, divorced. I was married once and married
twice.

Q Are you presently married?

A Yes.

A-81

1 ards Heimle - direct 178 -A

2 Q Where does your wife reside?

3 A In Colorado.

4 Q What is she doing there?

5 A Attending college.

6 Q What college?

7 A University of Colorado.

8 Q Do you have any children?

9 A Yes.

10 Q By your first or second wife?

11 A By my first marriage.

12 Q Residing in New York?

13 A Yes.

14 Q Now, sir, have you ever been convicted of a

15 crime?

16 A Yes.

17 Q Do you know for what crimes you have been con-

18 victed?

19 A Yes.

20 Q Will you please tell the ladies and gentlemen

21 of the jury?

22 A Possession of airline tickets. They were stolen

23 airline tickets.

24 Q When was this, sir?

25 A I went away for it in 1972.

A-82

1 ards Heimerle - direct 179

2 Q You went to prison?

3 A Yes.

4 Q Anything else, sir?

5 A There were two offenses at that time but I

6 went away for the same, four years I went away for.

7 Q What was the other offense, sir?

8 A Counterfeiting in the government.

9 Q A federal charge?

10 A Yes.

11 Q How long were you sentenced for that charge?

12 A One year.

13 Q Prior to this, sir, were you convicted of any

14 crimes?

15 A The one in 1972.

16 Q Before 1972.

17 A Yes. I think 1971.

18 Q For what?

19 A Unauthorized use of an automobile.

20 Q Any others, sir, that you know of?

21 A No.

22 Q Mr. Heimerle, when were you released from jail

23 on your incarceration?

24 A This past December 24.

25 Q December 24?

A-83

1 ards Heimerle - direct 180

2 A Yes.

3 Q Did you take up residence with your family?

4 A Yes.

5 Q Did you reside there continually from then on?

6 A Yes.

7 Q Did you gain employment?

8 A Yes.

9 Q Who did you work for?

10 A Tailor Design on East 71 Street in Manhattan.

11 Q What capacity?

12 A I was a salesman in the construction line,
13 renovating kitchens, remodeling, things like that.

14 MR. POLLACK: May I have this marked.

xx 15 (Defendant Heimerle Exhibit B marked for
16 Identification.)

17 Q Mr. Heimerle, I show you what has been marked
18 as Exhibit B for Identification and ask you if you recognize
19 that?

20 A Yes.

21 Q This was taken from your possession on February 6?

22 MR. NAFTALIS: Objection as to form, your Honor.

23 THE COURT: Sustained.

24 Q Did you have this made up?

25 A Yes, sir.

A-84

1 ards

Heimerle - direct

181

2 MR. POLLACK: I move its introduction into
3 evidence, your Honor.

4 MR. NAFTALIS: I don't understand the relevance
5 of this.

6 THE COURT: Sustained.

7 Q Mr. Heimerle, what does your job entail, what
8 kind of work?

9 A I gave estimates for kitchens, repairs, floors,
10 we do everything. It is in the yellow pages, general
11 contractor.

12 Q What is your salary?

13 A \$100 a week plus commission.

14 Q Were you earning commissions?

15 A He owes me some presently, yes, sir.

16 Q How much are you owed?

17 A The sale on one job was \$15 thousand.

18 Q What was your commission?

19 MR. NAFTALIS: I object to this.

20 THE COURT: Sustained. He gets commissions.

21 Q Mr. Heimerle, do you know one Julian Mitchell?

22 A Yes.

23 Q Prior to yesterday did you know him as Mitchell?

24 A No.

25 Q Prior to yesterday how did you know him?

A-85

1 ards Heimerle - direct 182
2 A As Mossep.
3 THE COURT: How do you spell it?
4 THE WITNESS: Mossep.
5 Q Do you know what nationality Mr. Mossep is?
6 A I think he is English.
7 Q Did he have any name that was unusual, a nickname
8 that you used to refer to him?
9 A Julian --
10 MR. NAFATALIS: Objection, hearsay.
11 THE COURT: Overruled.
12 Q Was there any nickname he had concerning his
13 nationality?
14 A Julian the Englishman.
15 Q When did you meet Mr. Mitchell?
16 A I believe it was 1971. It may have been the
17 latter part of 1970.
18 Q Directing your attention to 1975, when did you
19 first meet Mr. Mitchell?
20 A He got in touch with a friend of my niece.
21 Q What is the young lady's name?
22 A Rosemary.
23 Q Where was she living at the time?
24 A In Brooklyn.
25 Q Did he ask that you get in touch with him?

1 ards Heimerle - direct 183

2 A That was -- yes.

3 Q Did you get in touch with him?

4 A Yes.

5 Q Approximately when?

6 A Right after he left the message.

7 Q When, sir? What month?

8 A I think it was around the holidays, around

9 Christmas.

10 Q Around Christmastime?

11 A I think it was.

12 Q Do you know where you called him or did you

13 call him?

14 A Yes.

15 Q Where?

16 A Edison Hotel.

17 Q Will you please keep your voice up.

18 A Edison Hotel.

19 Q When was the first time you saw Mr. Mitchell?

20 A On the evening of the day that I called him.

21 Q Did you have a conversation with him?

22 A On the phone, no.

23 Q Did you have a conversation with him in the

24 hotel?

25 A Yes.

1 ards Heimerle - direct 184

2 Q Did he tell you why he wanted to see you?

3 A Yes.

4 Q Will you please tell the ladies and gentlemen
5 of the jury?

6 A He wanted me to -- this is for money I loaned
7 him prior to him going away because he was locked up in
8 Jamaica or one of the Islands and his wife got in touch with
9 me and I gave his wife money to go back to South America.

10 MR. NAFTALIS: I object to this line of question-
11 ing.

12 THE COURT: Sustained.

13 Q When is the next time you saw Mr. Mitchell?

14 A From 1971?

15 Q No, from the time in 1975 at the Hotel Edison.

16 A I saw him about three times in one week.

17 Q Where did you see him?

18 A Two days apart, in the Edison Hotel.

19 Q Now, sir, did there come a time subsequent to
20 this that you had conversations with Mr. Mitchell concerning
21 monies that he owed you?

22 A Yes.

23 Q When was this?

24 A In the Edison Hotel.

25 Q When?

A-88

1 ards Heimerle - direct 185

2 A Right after December 25 or 26, whatever it might
3 have been.

4 Q After that, sir, sometime in January did you
5 have some --

6 MR. NAFTALIS: Objection as to form, your Honor.

7 THE COURT: Overruled.

8 A I was in constant touch with him because he
9 kept leaving a message and I don't know what date we are
10 referring to.

11 THE COURT: Don't look at me.

12 Q Where was he leaving messages for you?

13 A At first he called my friend's niece, Rosie.

14 THE COURT: That took care of the first contact.

15 A After, he got in touch with me at my parents'
16 house.

B26 17 Q Did there ever come a time when you had a dis-
18 cussion with Mr. Mossep about regaining monies he owed you?

19 A Yes.

20 Q When?

21 A At the Edison Hotel.

22 Q Did he ever repay you any monies he owed you?

23 A Yes.

24 Q When?

25 A A few days after the first meeting I had with

A-89

1 ards Heimerle - direct 186
2 him in the Edison.
3 Q How much did he pay?
4 MR.NAFTALIS: I object to this.
5 THE COURT: Overruled.
6 A He gave me \$200.
7 Q Mr. Heimerel, you heard the agents over the last
8 two days, Agent McDonell met you January 28, 1976 at Joyce's
9 Pub, is that correct?
10 A Yes.
11 Q Will you tell the ladies and gentlemen of the
12 jury how it came that you were at Joyce's Pub on that day?
13 A I had a meeting with him there.
14 Q Who?
15 A Julian.
16 Q When did you talk to Julian?
17 A He left a message for me and I called him back
18 at the Pickwick Arms.
19 Q Please keep your voice up.
20 A Called him back at the Pickwick Arms and told
21 me to meet him at Joyce's Pub.
22 Q Did he tell you why he wanted you to meet him?
23 A In reference to the money.
24 Q What money?
25 A The money that he owed me. He owed me altogether

A-90

1 ards Heimerle - direct 187

2 I believe about \$1,500.

3 Q What did he tell you?

4 A He said to meet him, he will give me a couple
5 hundred more.

6 Q Now, sir, did you arrive on the 28th at Joyce's
7 Pub?

8 A Yes.

9 Q Did you go into the pub?

10 A Yes.

11 Q Did you see Mr. Mitchell?

12 A Yes.

13 Q What happened next?

14 A He asked me to come outside.

15 Q And?

16 A We spoke about money. He said that at this time
17 he would give me \$300. Then he went back into the bar.
18 He came out with the \$300.

19 Q Did he come with anybody else?

20 A He came out, he got in the car, the other fellow
21 tapped on the window. He said, "Let him in."

22 Q What was his name?

23 A Frank.

24 Q Was this the gentleman you saw yesterday,
25 Mr. McDonell?

1 ards Heimerle - direct 188

2 A Yes.

3 Q What happened in the car, sir?

4 A Julian handed McDonell an envelope, Frank. I

5 don't know if that is his right last name. He handed him

6 an envelope.

7 Q Then what happened?

8 A Frank gave him some money.

9 Q What happened after that?

10 A Then he gave me the money.

11 Q Who gave you the money?

12 A He gave me the \$300 from the money that Frank

13 gave him.

14 Q What form of currency?

15 A I believe there was at that point, I think,

16 \$100 bills.

17 Q Three \$100 bills? /

18 A Yes.

19 Q Did you drive around the block?

20 A No.

21 Q Was that the end of your conversation on that

22 day with Mr. Mitchell and Frank?

23 A Yes.

24 Q Now, you heard agents testify that he met you

25 at Joyce's Pub on February 2, is that correct?

ards

Heimerle - direct

189

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A Yes.

Q Between the 28th and 2nd, had you had any
contact with Mr. Mitchell?

A Yes.

Q When?

A I went to meet him on -- in the Bonanza.

Q When, not where?

A About two days after meeting that is when he
introduced me to this fellow, Frank, about two days after.

Q Where did this meeting take place, sir?

A In the Bonanaza Luncheonette or Restaurant,
whatever.

Q Where is that located?

A Diagonally across the street from Joyce's Pub.

Q On Second Avenue?

A Yes.

Q What time of the day was the meeting, sir?

A It was in the morning when I met him. In the
daytime, in the morning, the early hours, 11:00 o'clock,
something.

Q Did you have a conversation with Mr. Mitchell
at that time?

A Yes.

Q Can you tell us what he said to you and what you

1 ards

Heimerle - direct

190

2 said to him?

3 A I kept bugging him about the money he owed me
4 and he said he would take care of it. He had something go-
5 ing with this guy, Frank. Frank came into some money, was
6 going to -- I don' know, might have some money from him or
7 something.

8 Q When did he tell you he would have the money
9 for you?

10 A Try to have it all at once --

11 MR. NAFTALIS: I object to this hearsay.

12 THE COURT: Overruled.

13 Q How did it come that you went to Joyce's Pub
14 on the 2nd of February, 1976?

15 A We got in touch with each other and made an
16 appointment to meet there.

17 Q Who?

18 A Julian.

19 Q Was your purpose in going there on the 2nd to
20 meet Julian?

21 A Yes.

22 Q When did he contact you for this meeting?

23 A Over the telephone. He left word with my parents
24 for me to call him back.

25 Q Did you meet him there that day?

A-94

ards

Heimerle - direct

192

Q Did you have any prearranged meeting with this Frank McDonell when you went there?

A No.

Q Now, sir, did you have a conversation with Mr. McDonell?

A Yes.

Q Did you then go in your car with him?

A Yes.

Q Can you tell us what was said between you and Mr. McDonell?

A I had asked where Julian was because he was supposed to meet me there. At the same time he was supposed to meet me there.

He said he didn't see him and asked if I saw him. The parking is bad there and I went around the block. As I was going around the block he kept speaking on the money.

Q Excuse me?

A He asked me about what is the deal, why does Julian owe me money. And, I told him from before, before I went away.

This guy started talking about counterfeit. He says that Julian --

MR. NAFTALIS: I object to this hearsay.

THE COURT: Sustained.

A-95

ards

Heimerle - direct

193

MR.POLLACK: He is having a conversation with the agent and this defendant.

THE COURT: What Mitchell said?

MR.POLLACK: No, this is what he was saying.

Q Is this a conversation between McDonell, is it not?

A Yes. McDonell, Frank. The man's name is Frank.

MR. POLLACK: This is a conversation between the agent who testified yesterday, not Mitchell and the defendant.

THE COURT: Go ahead.

A We drove and he spoke to me about, he wanted me to know why Julian owed me money and why he had loaned him the \$300 to give me.

Q Was any money passed on that day?

A No.

Q Did you give the agent anything on that day?

A No.

Q Now, sir, did there come a time when you met the agent again on the afternoon of February 5?

A Yes.

Q In the afternoon, 1:00 o'clock?

A I don't remember the dates. If that would be the third time I saw him.

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Q The third time you saw him?

A Right. I saw him on the 5th.

Q What time of day?

A In the afternoon, around 12:30, 1:00 o'clock,
1:30, something.

Q How did you come to meet with him?

A I had a meeting with Julian and Julian kept
setting up these meetings and it always turned out that Frank
was there, not Julian.

Q Where was that meeting to take place?

A In Joyce's Pub.

Q Did you have a conversation with Frank at that
time?

A Yes.

Q Did you give Frank a number where he could call
you?

A Yes.

Q What was the purpose in doing that?

A Because he wanted to talk with Julian and he
figured that I would be in touch with him before the day
was over.

Q What number did you give him?

A The number of the Pathmark Supermarket.

Q Why did you give him that number?

1 ards
2 A Because my mother and father -- my father is
3 very sick and takes lots of medication and gets annoyed
4 when the phone rings.

5 Q Did you see Julian that day?

6 A Yes.

7 Q Did he give you anything?

8 A Yes.

9 Q What did he give you?

10 A He gave me a package to give to Frank.

11 Q Did you give that package to Frank?

12 A Yes.

13 Q When?

14 A That night.

15 Q When you were arrested?

16 A Yes.

B27 17 Q Now, sir, after you were arrested were you taken
18 to Secret Service headquarters?

19 A Yes.

20 Q Did you have any conversation with the Secret
21 Service agents at that time?

22 A No, I didn't speak to them, they were speaking
23 to me.

24 Q Did they talk to you?

25 A Yes.

1 ards

Heimerle - direct/cross

196

2 Q Will you please tell the ladies and gentlemen
3 of the jury what they said to you?

4 MR. NAFTALIS: Objection, your Honor.

5 THE COURT: Why?

6 MR. NAFTALIS: Hearsay.

7 THE COURT: It is your client. Overruled.

8 A They told me that they wanted to meet a man,
9 Tony, and if I told them who Tony is, that I could leave.

10 Q Was that the extent of your conversation?

11 A Yes. They just kept going at it constantly.
12 A one-sided conversation.

13 Q What did they say?

14 A I was in a lot of trouble and I am going to go
15 away forever and if I did the right thing and tell them
16 where it came from and who the fellow Tony is, that I would
17 only do what I had on parole and they would not charge me
18 for whatever I was there for.

19 Q Have you seen Julian since your arrest?

20 A No.

21 MR. POLLACK: No further questions, your Honor.

22 THE COURT: You may cross-examine.

23 CROSS-EXAMINATION

24 BY MR. LOPEZ:

25 Q Now, you know Charlie Rosenberg, don't you?

2 A Right.

3 Q Now, can you explain to the jury how you met
4 Rosenberg after midnight on February 6?

5 A I stopped -- I had when I spoke on the phone to
6 Frank, I had a few hours, two hours to kill, approximately
7 two hours.

8 I went to the bar on Surf Avenue in Brookly, I saw
9 Harold there and I had a drink with him and asked him if he
10 would take a ride to the city with me.

11 Q At that time did you have the package that
12 Julian had turned over to you?

13 A Yes.

14 Q As a result of that conversation at the bar
15 with Rosenberg, what did you do? Did you go anyplace with
16 Rosenberg?

17 A We went to the city.

18 Q Where did you go?

19 A When I stopped by the Howard Johnson Motel and
20 asked him to check in and wanted to drop him off there.
21 I told him I was going to go down by 42nd Street and pick up
22 a few girls over there and bring them back up to the room
23 and that he should go in and get the room.

24 He went in to get the room and they wouldn't give it
25 to him because ideals or whatever and he came back out.

1 ards Heimerle - cross 199

2 Then we went we went down to the Ramada Inn.

3 Q Who went to the Ramada Inn?

4 A He went inside, checked in, came out and told
5 me what room number and at that moment I asked him if he
6 would take this up with him?

7 Q What?

8 A This package that Julian gave earlier that even-
9 ing.

10 Q Well, had you -- by the way, did you have any
11 discussion about that package with Rosenberg?

12 A No.

13 Q Then what happened after that?

14 A I just gave it to him. He went up.

15 Q Did you know his room number at that time?

16 A Yes, he gave me the room number.

17 Q Did you leave?

18 A Yes.

19 Q Did there come a time when you came back later
20 to the room?

21 A I went down by around 41st Street looking to
22 pick up a couple of girls over there and then I went --
23 circled the block a few times looking for females that
24 would walk the streets over there.

25 I didn't see them and it was getting late. I went

ards

Heimerle - cross

200

over to the Brasserie where I was supposed to meet Frank.

Q Did you return to the Ramada Inn with Frank?

A Yes, I picked up Frank, I went to the Ramada Inn.

Q Did you have occasion to go to the 10th floor with Frank?

A Yes.

Q What was the purpose of that, to pick up the package?

A Yes.

Q You asked Frank to come up with you to the 10th floor?

A Yes.

Q He was to accompany you to the room to pick up the package?

A Yes.

Q Did he decline to go in the room?

A Yes.

Q You knocked on the door, is that correct?

A Right.

Q No one answered?

A Right.

Q You went down to the lobby with Frank?

A Right.

ards

Heimerle - cross

201

- 1
2 Q Did you telephone from the lobby up to room 1026?
3 A Yes.
4 Q Did you in that conversation speak to Harold?
5 A Yes.
6 Q Did you ask Rosenberg to do something?
7 A Yes.
8 Q What did you ask him to do?
9 A I asked him to come down and bring down the
10 package I left.
11 Q Did you tell him why to deliver the package?
12 A Yes.
13 Q Where did you ask him to deliver the package?
14 A Outside of the Ramada Inn.
15 Q Did you tell him that -- your car was there?
16 A Yes.
17 Q Did you tell him that your car was there?
18 A I told him, I am not sure whether on the street
19 or on the sidestreet, east or west.
20 Q Did you in fact go down to the lobby and to
21 where your car was?
22 A Yes.
23 Q Let me ask you this: Were you seated in the car?
24 A Yes.
25 Q Was Frank seated in the car at the time?

- 1 ards
- 2 A Yes.
- 3 Q Were you behind the driver's seat?
- 4 A Yes.
- 5 Q Was that closest to the entrance of the hotel,
- 6 to the sidewalk?
- 7 A The entrance was around the corner on the avenue.
- 8 I was on the sidestreet.
- 9 Q But were you closest to the sidewalk?
- 10 A Yes.
- 11 Q At that time what were the weather conditions
- 12 on that day?
- 13 A The weather was very bad because I was sliding
- 14 all over the street that night.
- 15 Q Was it snowing?
- 16 A Yes, it was like turning to ice as it hit.
- 17 Q In other words, there was a snow storm, is that
- 18 how you describe it?
- 19 A Yes, very bad weather.
- 20 Q Did Harold come to you at the car?
- 21 A Yes.
- 22 Q Did he have the package with him?
- 23 A Yes.
- 24 Q Was the package in the same condition as it was
- 25 when you delivered it to him?

1
2 A Yes.

3 Q Was the package tied up or sealed in any way?

4 A Yes.

5 Q Now, when Harold Rosenberg came up to you was
6 the window opened or closed?

7 A It was closed. Then I just cracked it just a
8 little bit.

9 Q Did Harold Rosenberg give you the package?

10 A Handed me the package.

11 Q Do you recall having a conversation with Harold
12 at that time?

13 A No, I just said I would be back.

14 Q Did Harold ask you for money at that time?

15 A No.

16 Q Did Harold say to you at that time, "Have you
17 got the money?"

18 A No. Cut the conversation very short. There
19 was no conversation because all I did was crack it, he
20 handed it in and I took it and closed the window and left.

21 Q At that time you hadn't mentioned Frank to Harold,
22 did you?

23 A No.

24 Q Did Harold ask you who is the guy in the car?

25 A No.

1 ards Heimerle - cross 204

2 Q There was no conversation on that whatsoever?

3 A Not at all.

4 Q Then Harold left, is that correct?

5 A Yes.

6 Q Subsequent to this, before you saw Harold again,
7 you were arrested?

8 A Right.

9 Q By the way, when you were arrested was any
10 personal property removed from you?

11 A Yes.

12 MR. LOPEZ: I have no further questions.

13 BY MR. NAFTALIS:

14 Q Mr. Heimerle, there are a few questions I would
15 ask of you about your testimony.

16 You started your testimony, as I recall it, discussing
17 your prior convictions, correct?

18 A Right.

B28 19 Q You said you had three prior convictions, one
20 for possession of stolen airline tickets back in 1972, correct?

21 A Right.

22 Q Please keep your voice up.

23 A Yes.

24 Q That you had a counterfeiting prosecution,
25 correct?

ards

Heimerle - cross

206

\$50 and \$100 counterfeit bills, yes or no?

A Yes, one of each.

Q You were convicted of that, were you not?

A Yes.

Q Now, Mr. Heimerle, weren't you also convicted in 1974 also in this very courthouse, by pleading guilty, to using the mail in a scheme to defraud?

A That is the same as the airline ticket.

Q Weren't you convicted?

A Yes.

Q That is the airline ticket conviction?

THE WITNESS: As to airline tickets.

MR. NAFTALIS: Maybe I can clarify that.

THE COURT: That question doesn't help.

MR. NAFTALIS: He testified that he was convicted of possessing stolen airline tickets and charged with a scheme and artifice to defraud.

THE COURT: He says possessed the same airline tickets.

Q Mr. Heimerle, I direct your attention to November 28th, 1972. Didn't you plead or were you found guilty of grand larceny in the third degree in Queens County Supreme Court, yourself and another man, Mr. Mayo?

A That is the same four years, yes.

1 ards

Heimerle - cross

207

2 THE COURT: That was the automobile case or in
3 addition?

4 THE WITNESS: There was a whole bunch of stuff
5 and they just kept throwing it all together and I went away
6 on one term.

7 THE COURT: The government is entitled to bring
8 out each conviction. I gather the stolen airline tickets
9 is one conviction, right?

10 MR. NAFTALIS: There was a federal and state.

11 THE COURT: The conviction was in the state?

12 MR. NAFTALIS: The state court for larceny in
13 the third degree not dealing with airlines.

14 THE COURT: That makes a fourth one.

15 Q Do you remember that one, Mr. Heimerle?

16 A They are both together, that is.

17 Q Mr. Heimerle, did you remember?

18 A Yes.

19 Q Mr. Heimerle, do you recall in July, July 17,
20 1972 in the Supreme Court of the State of New York, County
21 of New York, a conviction based on a plea of guilty to the
22 crime of forgery in the second degree? Do you recall that
23 one, Mr. Heimerle?

24 A I would like to see it.

25 (Hanging to witness.)

Q That is your name on the caption?

THE COURT: He is looking at it.

A This is the same one that I said I went away for, the same crime that I did the four years for.

THE COURT: You'd better get the date of all the judgments in.

MR. NAFTALIS: I will do that right now, your Honor. The federal counterfeiting charge --

THE COURT: Do it chronologically.

MR. NAFTALIS: All right, your Honor.

THE COURT: The oldest one.

MR. NAFTALIS: The oldest one, your Honor, is filed July 17, 1972, State of New York, County of New York, his conviction is based on a plea of guilty to forgery in the second degree under a 43-count indictment.

Secondly, Queens County, dated 11/28/72, conviction for grand larceny in the third degree. The third --

THE COURT: Is that a plea or a trial?

MR. NAFTALIS: Guilty --

THE COURT: After a plea or a trial?

MR. NAFTALIS: Plea, your Honor.

THE COURT: He entered a plea to grand larceny?

MR. NAFTALIS: That is correct, your Honor.

Third degree.

ards

Heimerle - cross

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The third, dated June 18, 1973, United States District Court for the Southern District of New York, Indictment 72 Cr. 1330, judgment of conviction, Honorable Robert L. Carter, United States District Judge.

THE COURT: Plea or a trial?

MR. NAFTALIS: A verdict, your Honor, a jury verdict, conviction of violation of 18 US Code, Section 371, conspiracy to violate Section 472 and 473 and also a conviction for a substantive charge of violating Section 472 and 473. That is dated July 18, 1973.

The fourth conviction is dated July 23, 1974, plea of guilty for using the mails, Southern District of New York, plea of guilty to using the mails in executing a scheme and artifice to defraud.

Your Honor, that was Judge Brieant.

THE COURT: All right. There were four convictions. Go ahead.

BY MR. NAFTALIS:

Q Mr. Heimerle, I believe you testified on your direct examination that you were paroled from federal custody on December 24, 1975, correct?

A Released from federal custody.

Q And placed on parole then?

A No. I was like on parole, I was paroled from

1 ards

Heimerle - cross

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2 lounge on 183rd Street. He gave me a couple of hundred
3 dollars. I believe it was \$200.

4 Q Julian lived at the Pickwick Arms I think you
5 said?

6 A He did live at the Pickwick Arms. I think he
7 changed residences and that is when he gave me the phone
8 number of this lounge to contact him because someone robbed
9 his bags or something in the Pickwick Arms.

10 Q At that time, when you were first dealing with
11 him, he lived at a midtown Manhattan hotel?

12 A Yes.

13 THE COURT: Wait a second, will you get your
14 No.2 to wake up? I will excuse you from this jury. We
15 have very important matters here.

16 Go ahead.

17 Q I believe you testified that you lived out in
18 Brooklyn, didn't you?

19 A Yes.

20 Q Way out in Brooklyn?

21 A Yes.

22 Q Why did Julian tell you to take the package?

23 A He said that if I should hear from Frank, be-
24 cause I had talked to him, that I went to meet Frank when
25 Julian wasn't there, like he was supposed to be. When I

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1 ards Heimerle - cross 221
2 contacted him afterward, when he called me, he left the
3 number of the Pinehurst Lounge that I should contact him.
4 Q Where is the Pinehurst Lounge?
5 A On 183rd Street, on the West Side.
6 Q 83rd?
7 A 183rd Street.
8 THE COURT: Washington Heights, Mr. Naftalis.
9 MR. NAFTALIS: Thank you, your Honor.
B30 10 Q Where did he give you this package?
11 A Right outside the bar but on the hill, I couldn't
12 go, the weather was so bad, we pulled up on the top. If I
13 went down, the car slid right down the hill. It is a very
14 steep incline.
15 Q Are you telling these ladies and gentlemen of
16 the jury that in the Borough of Manhattan on February 5th --
17 A Yes.
18 Q -- on a date where the weather was bad and the
19 streets were snowy, right?
20 A Yes..
21 Q You were sliding and had difficulty as you drove
22 up to Washington Heights, correct?
23 A No, I had no difficulty driving there, no. The
24 highways, they spread salt on the highway.
25 Q When you got to 183rd Street it was icy and

1 ards

Heimerle - cross

222

2 snowy there?

3 A One particular spot where there's a big hill,
4 all icy up there.

5 Q After you got there, Julian Mitchell gave you
6 a package and told you to deliver it to Frank McDonell when
7 you saw him, right?

8 A If he called, at 12:00 o'clock.

9 Q But told you to deliver it to him, correct?

10 A Yes, asked me, didn't tell me.

11 Q You agreed to do it. You ask him why he couldn't
12 give it himself?

13 A He can't get around because of the street, the
14 cabs.

15 Q Did you ask him why he didn't take the subway?

16 A No, I didn't -- no.

17 Q He said he couldn't get a cab?

18 A He didn't say that. I just said that the weather
19 was bad.

20 Q On this snowy and icy afternoon he gave you a
21 package then asked you to deliver it to Frank McDonell if
22 you get to see him, right?

23 A Yes.

24 Q Then you immediately agreed to and took the
25 package, correct?

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1 ards Heimerle - cross 223
2 A Yes.
3 Q Then you drive back all the way to Brooklyn,
4 correct?
5 A Yes.
6 Q Still snowy and icy, isn't it?
7 A Not on the highway.
8 Q Correct?
9 THE COURT: Not on the highway.
10 Q Still snowing, Mr. Heimerle?
11 A Intermittent, yes.
12 Q A bit of a blizzard, wasn't this, on the 5th
13 and 6th of February?
14 A I wouldn't call it a blizzard. I don't know
15 what the definition is of a blizzard.
16 Q A heavy snow storm, Mr. Heimerle?
17 A Was bad weather, very bad weather.
18 Q Then you drove in this snowy weather all the
19 way back to Brooklyn?
20 A Yes.
21 Q Then you tell me that you got up a little bit
22 before 12:00 o'clock and got back in your car and drove to
23 the parking lot in Brooklyn to receive a phone call from a
24 man you really didn't know, correct?
25 A I did not leave my house.

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1 ards Heimerle - cross 224
2 Q Where did you leave?
3 A I stopped in the diner on Coney Island Avenue.
4 Q You drove to some location in Brooklyn out to
5 a phone booth in a deserted parking on a cold winter night
6 to receive a phone call from a man you didn't even know,
7 correct?
8 A That I don't know?
9 Q Did you really know him?
10 A I don't know him well.
11 Q Correct?
12 A Correct.
13 Q Then you waited there in the snow and ice to
14 midnight for the phone booth to ring, right?
15 A Just pulled up and the phone rang. I got the
16 call at 12:00 and --
17 Q But you stayed there by the booth waiting for
18 the phone to ring and if it didn't ring until five after
19 you would have waited until five after?
20 A It would have been 10 minutes or so.
21 Q You sat out there on a cold winter's night wait-
22 ing for a phone call from a man you really didn't know?
23 A It was warm in the car -- it was cold.
24 Q Then after you spoke to him you drove into the
25 snow and ice back into Manhattan?

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Heimerle - cross

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A Yes.

Q To deliver a package for Julian Mitchell to a man you don't really know?

A I can't answer that, it is not what I actually did.

Q But you eventually drove back to Manhattan, didn't you?

A Yes.

Q Drove to Manhattan and one reason you testified was to deliver this package, right?

A Yes.

Q Mr. Heimerle, you also testified on your direct examination that when you went to deliver the package the first thing you did was drop Rosenberg at the motel, right?

A Yes.

Q You gave him the package, right?

A After he checked in, yes.

Q After he checked in, but you gave it to him, didn't you, yes or no?

A Yes.

Q Then you rode over to the Brasserie to meet Agent McDonell, right?

A I went to 42nd Street first.

Q Actually went to 42nd Street and then the

1 ards
2 of justice --

3 MR. LOPEZ: I am just trying to limit the cancer.

4 THE COURT: It is hearsay.

5 MR. NAFTALIS: The government would object to
6 the hearsay.

7 THE COURT: Isn't it?

8 MR. POLLACK: That is why I made the offer.

9 THE COURT: What do you think it is?

10 MR. POLLACK: I think it is hearsay, your Honor,
11 but I think, under the context of the case, there might
12 be some leeway, looking at the motivation of the government
13 informant. That only depends on how much leeway the Court
14 wishes.

15 THE COURT: Not in view of your client's testi-
16 mony under oath here. I will sustain the objection to
17 the hearsay.

18 (In open court.)

19 MR. POLLACK: Judge, at this time the defendant
20 Heimerle will rest.

21 MR. LOPEZ: The defendant Rosenberg rests, your
22 Honor.

23 THE COURT: Any rebuttal?

24 MR. NAFTALIS: No rebuttal, your Honor.

25 THE COURT: Ladies and gentlemen, you are

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ROBERT B. FISKE JR.
AUG 18 1973